

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge J. C. Nicholson, Jr.

Case No. 2019-000332

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SC Court of Appeals

Alvar R. Rissanen, Michael H. Baxley,
Clifford W. Forner, and Willie L. Hood,

Respondents,

v.

City of North Charleston,

Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) NINTH JUDICIAL CIRCUIT

Alvar R. Rissanen; Michael H. Baxley;
Clifford W. Forner; and Willie L. Hood,

) Case No.: 2013-CP-10-3210
)
)

Plaintiffs,

vs.

City of North Charleston,

Defendant.

ORDER BY

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT

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This matter came before me as a bench trial on October 18 and 19, 2017. There is one cause of action in Plaintiffs' Amended Complaint, promissory estoppel. Based on the pleadings, the witnesses' testimony, the exhibits, the trial briefs, and post trial memoranda submitted by counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The four (4) Plaintiffs are retired fire fighters who were all employed with Defendant City of North Charleston at the time of their retirement.
2. Plaintiff Rissanen worked for the City of North Charleston for 35 years. He retired on September 30, 2005. At the time of his retirement, he was the Fire Chief and he had held that position for 13 years.
3. Plaintiff Baxley worked for the City of North Charleston for 34 years. He retired on June 30, 2005. At the time of his retirement, he was the Personnel Chief and he had held that position for 7-8 years.
4. Plaintiff Hood worked for the City of North Charleston for 33 years. He retired in 2005. At the time of his retirement, he was an Assistant Fire Chief.

5. Plaintiff Forner worked for the City of North Charleston for 27½ years. He retired in June of 2009 shortly after receiving a letter from Mayor Summey indicating that employees who retired after July 1, 2009, would be treated differently than those who had retired before July 1, 2009. At the time of his retirement, Plaintiff Forner was a Battalion Chief. Plaintiff Forner had to purchase 2 ½ years of retirement to be able to retire in 2009, at a cost to him of \$20,000.

6. Three (3) of the Plaintiffs are currently paying between \$130.00 and \$140.00 every month to purchase a Medicare Supplement Policy (or about \$1,680.00 annually.) The Plaintiffs testified that the cost of a Medicare Supplement Policy increases each year. Plaintiff Forner testified he estimates that when he turns age 65, the cost to purchase a Medicare Supplement Policy will likely be greater than \$140 per month.

7. The City of North Charleston has a "strong mayor" form of government pursuant to S.C. Code Ann. §5-9-20. R. Keith Summey is the Mayor of North Charleston.

8. Pursuant to S.C. Code Ann. § 5-7-272, municipal ordinances that have been approved by City Council in two (2) readings have the force of law.

9. All municipal ordinances must be codified per S.C. Code Ann. § 5-7-290.

10. North Charleston first codified its municipal ordinances in 1986. (Ord. 1986-29.)

11. North Charleston Ordinance No. 1984-23 is included in the City's codification.

12. North Charleston Ordinance No. 1984-23 states, in pertinent part, "Be it ordained by the Mayor and City Council of the City of North Charleston . . . : Upon retirement from the City, employees who meet the requirements listed below have the option to retain health, life, and dental insurance under the City's group plan by paying the applicable rate budgeted for full time active employees . . . : Police/Fire: age 55 or 30 years

covered service, or early retirement age 50 or 25 years covered service." The ordinance goes on to state that "Coverage will terminate upon failure of the retiree to make the required advance payment, upon termination of the City's group plan, or when determined to be in the best interest of the City."

13. North Charleston City Council has never repealed Ord. No. 1984-23.

14. The manner to amend City ordinances is stated in the North Charleston City Code (North Charleston City Code, Section 1-5) and North Charleston City Council has never amended Ord. No. 1984-23.

15. In May of 1998, while Plaintiffs were still employed and shortly after Mayor Keith Summey assumed the position of Mayor, Mayor Keith Summey wrote a memo to the Finance Committee of Council where he delineated his plan to provide retirees with free retiree health insurance

16. Whereas Ord. 1984-23 merely stated that after working a certain number of years, retirees could remain on the City's health insurance plan paying the same amount fulltime employees paid, Mayor Summey's Memo acknowledged the fact that Medicare would become available to retirees at age 65, and that when retirees turned 65 and went on Medicare, the City would pay the cost of a Medicare Supplement Policy for them so their health insurance would continue to be free.

17. In this 1998 Memo, Mayor Summey also acknowledged that if retirees had family plans their dependents would also be covered until they were Medicare eligible.

18. Specifically, in this 1998 Memo, Mayor Summey stated retirees would receive: 1) free single coverage health insurance when they retired if they had worked for the City for 30 years (or a smaller percentage paid if they retired with less than 30 years' service); 2) a free Medicare supplemental health insurance policy when they became eligible for Medicare at age

65; and 3) the continuation of health care coverage for their spouse and/or dependents on a City health insurance policy until their spouse and/or dependents became Medicare eligible.

19. Defendant's Finance and Human Resources employees were authorized to provide information to employees regarding retiree health insurance and they confirmed and explained to employees the Mayor's promise when asked about it after 1998.

20. Defendant operates under a Mayor-Council form of government in which the Mayor is the Chief Administrator of the City.

21. As Chief Administrator, the Mayor is responsible for appointing all employees and directing and supervising the administration of all departments. (S.C. Code § 5-9-30.)

22. As Chief Administrator, the Mayor has the responsibility of appointing all employees and directing and supervising the administration of all departments, including establishing personnel policies. (North Charleston Code of Ordinances Sections 2-96, 2-176.)

23. The Mayor can draw on City funds with the Finance Director's approval. (*Id.* at Section 2-86)

24. City Council cannot repeal by ordinance obligations assumed by the City fixing the salaries of employees of the City. (*Id.* at Section 2-113.)

25. The City implemented the Mayor's 1998 interpretation of Ordinance 1984-23 from 1998 until 2009.

26. Plaintiffs testified they trusted HR Director Bob Cannella and Mayor Summey when they made promises about free health insurance for retirees because Bob Cannella and Mayor Summey had authority as Mayor and Finance Department Head to make those promises. Additionally, they testified (and the Mayor agreed) that the Mayor had made the promises repeatedly through the years at staff meetings and luncheons and at different fire stations to hundreds of employees. Plaintiffs testified they knew they could count on the Mayor because he

had never broken a promise to them and was a man of his word. It is undisputed that the Mayor confirmed the promises made in his 1998 Memo verbally on many occasions.

27. Defendant's Mayor used the promise of free retiree health insurance as a recruiting tool to keep firefighters, including Plaintiffs, employed by the City. Plaintiffs testified when firefighters would complain about low wages or consider leaving the City, Defendant's Mayor would point to the promise of free retiree health insurance and boast to the employees, "You've got a honey of a deal."

28. Plaintiff Rissanen, a former Fire Chief for Defendant, testified that the City's Fire Department personnel were paid less than other municipalities, that the promise of the City paying the cost of retiree health insurance was an inducement for fire personnel to remain employed by the City, and the promise of free retiree health insurance for life reduced turnover.

29. When three (3) of the Plaintiffs (Rissanen, Baxley and Hood) retired in 2005, they began obtaining what they were promised. Specifically, they remained on the City's health plan with the City paying the cost of their single coverage health insurance. None of these Plaintiffs were Medicare eligible at the time they retired.

30. In 2009, accounting practices changed for political entities, and cities and counties were required to begin accounting for their contingent liabilities in the same manner as private businesses. This meant that for the first time the City had to set aside funds that were sufficient to meet their future financial obligations to its retirees.

31. Mayor Summey sent Plaintiffs and other employees a letter in 2009 indicating the City would continue to pay all of or a percentage of the cost of retiree health insurance until age 65, but for employees retiring after June 30, 2009, all healthcare benefits would cease once an employee became eligible for Medicare.

32. In effect, the City was reneging on two (2) of the three (3) parts of its promise: it would continue to provide free health insurance to retirees until age 65 when they became eligible for Medicare, but it would no longer pay the cost of a Medicare supplement which meant retiree health care would no longer be free after the age of 65. Additionally, the City would no longer allow retirees' spouses to be covered by the City's self-insured health insurance program once a retiree turned 65. However, this promise was never conveyed directly to the retirees' dependents and the City never shared costs for eligible dependents of retirees to participate in the plan.

33. Between 2009 and 2011, the Mayor met with Plaintiffs Rissanen and Baxley and Plaintiffs Rissanen and Baxley were assured by the Mayor, City Council members, and HR personnel that they would be not treated differently as they had already retired so they were grandfathered in. Plaintiffs Rissanen and Baxley relayed this information to the other Plaintiffs and retirees.

34. The former HR Director, Bob Canella, repeatedly assured Plaintiff Rissanen he would be grandfathered.

35. City Councilmembers Rhonda Jerome and Bob King assured Plaintiff Baxley he would be grandfathered.

36. Nevertheless, at some time after 2011, Plaintiffs realized that these representations were probably not true and that the City intended to break its promise to them. In fact, the City stopped paying the cost of Plaintiffs' Medicare supplement when Plaintiffs Rissanen, Baxley and Hood reached age 65 and the City has refused to provide health insurance for Plaintiffs Rissanen's and Baxley's wives.

37. Plaintiffs Rissanen's and Baxley's wives are currently on COBRA which will end shortly for Plaintiff Baxley's wife, and in a year or so for Plaintiff Rissanen's wife.

38. The City's Finance Director Warren Newton testified the City's annual budget is about \$120 million dollars. Of that amount, Mr. Newton testified about 6.5 million dollars is spent on health care for all of its 1100 employees, or about 6.5% of its budget. In 2009, there were only about 67 retired employees receiving free health insurance.

39. The cost to the City of paying for these four (4) Plaintiffs' Medicare Supplement Policies and/or their and their dependents' insurance until age 65 is an extremely small percentage of the City's budget.

CONCLUSIONS OF LAW

1. "[A]n estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice." *Higgins Constr. Co. v. S. Bell. Tel. & Tel. Co.*, 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981).

2. "The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise." *Bishop v. City of Columbia*, 401 S.C. 651, 664 (Ct. App. 2013) citing *Woods v. State*, 314 S.C. 501, 505 (Ct. App. 1993).

3. Promissory estoppel is used where the refusal to apply it would sanction the perpetration of a fraud or would result in other injustice. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (quoting *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). South Carolina courts recognize a remedy in equity in a promissory estoppel claim. *Satcher v.*

pm
Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, 538 (Ct. App. 2002); *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). The principle that equity “regards as done that which ought to be done” applies in cases where the party seeking equitable relief establishes “a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.” *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011) (citing *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, “courts look to the substance and intent of the parties, and give a construction consistent with such intent.” *Regions Bank*, 394 S.C. at 253-254, 715 S.E.2d at 354-355 (quoting *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480 (1842)). Once a party establishes an equitable right, the court may dispense with formalities that would defeat the equity. *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. Where a substantive right exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004).

4. The promise of free retiree health insurance was not ambiguous. The fact that the City complied with its promise for several years is direct evidence that the promise was unambiguous and capable of being fulfilled. In fact, Defendant City is still complying with part of its promise, paying the cost of single coverage retiree health insurance until the retirees reach age 65. Defendant cannot contend that the promise is so ambiguous that it cannot be fulfilled when it continues to keep part of the promise and was very clear on what part of the promise it

was not going to keep per the Mayor's 2009 letter. In fact, Mayor Summey acknowledged that a promise had been made and he testified would have continued doing what had promised if he could have financially, which indicates the promise was clear enough that all parties understood its terms and clear enough that it could easily be fulfilled if the City so chose.

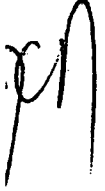
5. Upon consideration of the totality of the circumstances, this Court concludes that the Plaintiffs' reliance on the promise of free retiree health insurance for life was reasonable despite the discretionary language contained with Ord. No. 1984-23 stating "[c]overage will terminate . . . when determined to be in the best interest of the City." *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337-38 (Ct. App. 2000) ("A determination of justifiable reliance involves the evaluation of the totality of the circumstances, including the positions and relations of the parties."). A party's reliance on a representation is not unreasonable, unexpected, or unforeseeable as a matter of law when testimony indicates that the representations were "not uncommon" within the setting in which they were made. *See Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). Here, there was ample evidence that the Plaintiffs' reliance was reasonable because of the circumstances surrounding the promise, the context in which the promise was made and repeated, and the position of the parties making the promise.

6. The final element of promissory estoppel requires demonstrating that the reasonably relying promisee sustains injury due to a disposition inconsistent with alleged promise. *Craft v. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In *Craft*, promissory estoppel was found not to exist as the plaintiff's unemployed status was due to an external factor. Similarly, *Barnes v. Johnson*, 402 S.C. 458, 475, 742 S.E.2d 6, 15 (Ct. App. 2013), is distinguished from the facts in this case as in *Barnes* case, an external factor (a fire) destroyed the property at issue. These cases are distinguishable from the case at hand

because, here, each of the Plaintiffs has suffered injuries resulting directly from Defendant's actions. Specifically, Plaintiffs have paid more and are paying more for health insurance than they would have because Defendant did not keep its promise.

7. In reliance on Defendant's promises, Plaintiffs accepted lower wages, turned down job offers or did not seek other employment, retired earlier than they would have, and did not fully pursue jobs with higher earning potential.

8. The facts in this case are similar to the facts in a case involving retired firefighters in Columbia, S.C. where the Court of Appeals reversed summary judgment finding there was a scintilla of evidence to support a claim for promissory estoppel and remanded the case for trial. (*Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)).

 9. In *Bishop*, a similar argument was made by Defendant City of Columbia as by Defendant in this case. Specifically, the City of Columbia, citing the case of *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996), argued that the decision to provide free retiree health insurance based on the number of years worked is a legislative, not a business decision and that one legislative body cannot bind a future legislative body. However, that particular argument is not relevant here as the Court of Appeals only considered this argument as it related to a governmental entity's *contractual* obligations and Plaintiffs have not brought a contract claim in this case as the plaintiffs did in *Bishop*; here, Plaintiffs have only alleged a promissory estoppel claim.

10. In *Bishop*, the Court of Appeals did not decide this particular issue as it dismissed the contract cause of action on other grounds.

The City also argues, and Retirees dispute, that summary judgment on the contract claims was appropriate because: (1) Retirees were "at-will" employees; (2) contracts for continuing free health insurance would violate public policy; and (3) Retirees could not have a permanent right to free lifetime health insurance under *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996). Because we

affirm the grant of summary judgment against the contract claims on other grounds, we need not address these arguments.

Bishop supra, 401 S.C. 651, 663, 738 S.E.2d 255, 261.

11. Additionally, Defendant City operates under a Mayor-Council (strong Mayor) form of government in which the Mayor is the Chief Administrator of the City. Our Supreme Court held in *Townes Associates, Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976) that a city's chief administrator has the authority to enter into contracts on behalf of the city to further its policies. Here, the policy of the City to provide free retiree health insurance is reflected in Ord. 1984-23. Therefore, the Mayor did not act outside the scope of his employment by making representations to City employees regarding payment of the cost of retiree health insurance by the City as that is the type of representation for which he is responsible for as Chief Administrator.

12. The promise in this case involved payment of money, or additional wages, and a promise of wages in the future can be part of an employee's salary. The South Carolina Payment of Wages Act defines wages as "*all amounts at which labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee *under any employer policy* or employment contract." *S.C. Code § 41-10-10* (emphasis added). The future wages promised to Plaintiffs are compensation for work which had already been performed by them. Plaintiffs worked for the City for the requisite number of years to obtain insurance that would cost them nothing (or almost nothing in Plaintiff Forner's case) and, thus, the promise had significant value which is an easily ascertainable monetary amount. Further, in *Bishop*, the Court of Appeals referred to the promise of retiree health

insurance as a promise for “free” insurance, indicating its agreement that the promise involved the money value of the insurance and not just a future benefit.

Retirees also testified that several supervisors informed them they would receive *free* health insurance for life during their individual merit interviews and evaluations, which were incidental to the supervision of their employment. Therefore, the employment review context during which the representations were made provides a scintilla of evidence to suggest the representations and promises were within the supervisors’ authority and reasonably relied upon.

Bishop v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013) (emphasis added).

The Court of Appeals considered and ruled that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now—that its claim for benefits rather than a claim for money. By allowing the *Bishop* case to go forward, the Court of Appeals rejected Defendant’s argument that the promise was unenforceable because it was a promise for future benefits.

13. The City’s mere failure to enforce an ordinance by failing to fund it does not amend or repeal the ordinance. The enforcement of an ordinance is discretionary. North Charleston’s failure to enforce Ord. No. 1984-23 by not funding it does not amend or repeal that Ordinance. In this case, the 1984 Ordinance is evidence of Defendant’s policy of paying the cost of retiree health insurance which was reflected in the Mayor’s actions and promises in 1998 and subsequently through the years.

14. Defendant argues the Tort Claims Act (S.C. Code § 15-78-60 (4)) absolves Defendant of liability. However, Plaintiffs’ only cause of action is a promissory estoppel claim which is a quasi-contract claim, so the Tort Claims Act is not relevant to this case. *See, North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

15. Plaintiffs’ claims are not barred by the statute of limitations. Plaintiffs had many discussions with Defendant’s Mayor and HR personnel after receiving the Mayor’s letter in May

of 2009. For at least two years after May of 2009, Defendant continued to represent that Plaintiffs would be "grandfathered." The Mayor's May 2009 letter stated that proposed changes would go into effect in June 2010 inferring that employees retiring before June 1, 2009 would be treated differently than employees retiring after June 1, 2009. A memorandum authored by Mayor Summey confirmed that grandfathering was being discussed. Plaintiffs were not on notice that Defendant had decided not to grandfather them until after 2011. In fact, Plaintiffs testified they believed the Mayor was an outstanding mayor who could make things happen, and was a man of his word. As late as 2011, Mayor Summey told Plaintiffs he wanted to keep the promise and would try to find a way to do so and was directing City employees to find a way to help Plaintiffs.

 16. "[A] defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007) (quoting *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997)). Here, the Mayor and the City's HR and administrative personnel continued over the course of many months after the Mayor's 2009 letter to assure Plaintiffs verbally and in writing that they would be grandfathered; the City even arranged for Plaintiffs to meet with an insurance company. The City's conduct was intended to, and did, induce the Plaintiffs to hold off filing a lawsuit as they believed that the promises made to them would be kept.

17. Plaintiffs are entitled to an equitable remedy. In *Dockins v. Ingles Mkts.*, 306 S.C. 496, 497, 413 S.E.2d 18, 18-19 (1992), the Court held equitable relief included employment, reinstatement, and promotion; the idea being to put the employee back in the position he would have been. "[A] plaintiff could seek restitution in equity, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as

belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession . . . for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213-214 (2002). Contrary to Defendant's argument, reliance damages can be money damages.

18. Back pay is an equitable remedy because it is a form of restitution. *Curtis v. Loether*, 415 US 189, 197 (1974). Here, restitution takes the form of money owed to Plaintiffs Rissanen, Baxley and Hood not as back pay, but as reimbursement to them for their purchase of Supplemental Medicare policies which the City should have purchased on their behalf. The amount of restitution is easily ascertainable year to year. The three (3) Plaintiffs (Rissanen, Baxley, and Hood) who have already had to pay the cost of Medicare Supplement policies out of their pocket should be repaid these amounts.

19. Reinstatement is also an equitable remedy and here reinstatement of the broken promise can occur though the City purchasing a Medicare Supplement Policy for each Plaintiff at age 65. From a practical standpoint, the cost is easily known each year as it only changes annually. It may be more practical for Plaintiffs to purchase the Medicare Supplement Policy and be reimbursed by Defendant City each year.

20. An equitable remedy can also include the damages caused when a plaintiff sustains injury by quitting his job in reliance on a promise. *Craft v. S.C. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In Plaintiff Forner's case, he resigned before working for 30 years because he received a letter from the Mayor in 2009 indicating employees who retired before June of 2009 would be treated differently than those who retired after that date. By retiring early to obtain the benefit of what was

promised to him, he failed to qualify for free insurance until age 65 as he only worked 28 years so he has been paying 16.5% and will continue to pay 16.5% of the cost of his insurance until age 65.

21. Plaintiffs are entitled to attorney fees as they prevailed against a state entity. S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

 *Id.* (emphasis added).

Defendant is a political subdivision of that State. Plaintiffs are the prevailing party, the City acted without substantial justification when it broke its promise. The cost to the City to keep its promise to these four (4) Plaintiffs was very minimal. There also appears to be no special circumstances presented by the City that would make an award of attorney fees unjust.

For all of the above reasons, I Order as follows:

1. Plaintiffs Rissanen, Baxley and Hood shall be reimbursed the cost for any and all Medicare Supplement Policies they have purchased. If the parties cannot agree on the amount of reimbursement then the court will reconvene and hear testimony and assess the amount to be paid;

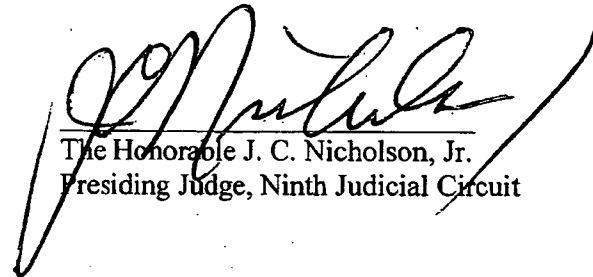
2. All Plaintiffs will submit to the City, annually, the cost of the Medicare Supplement Policy they have already purchased or will purchase in the future, with written documentation, and the City will promptly pay the full cost of that policy to each Plaintiff;

3. The City of North Charleston is not responsible for purchasing or reimbursing the Plaintiffs for their dependent's policies.

4. Chief Forner is not entitled to the \$20,000 he paid to qualify for retirement.

5. Plaintiffs' attorney fees and costs will be paid by the City pursuant to S.C. Code 15-77-300. Plaintiffs' counsel shall submit an Affidavit of Fees and Costs to the Court within ten (10) days of the date this Order is filed and Defendant may either submit any objections to the Affidavit within ten (10) days of service of the Affidavit or it may request a hearing where it will be given an opportunity to examine Plaintiffs' counsel.

AND IT IS SO ORDERED.



The Honorable J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

February 6, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP- 10-3210

Alvar R. Rissanen; Michael H. Baxley; Clifford W. Forner; and
Willie L. Hood

City of North Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiffs	City of North Charleston	\$214,236.15
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

Judge Code

Date

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Page 2 of 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Alvar R. Rissanen; Michael H. Baxley;
Clifford W. Former; and Willie L. Hood,

Plaintiffs,

vs.

City of North Charleston,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-3210

ORDER

2018 NOV 13 PM 2:03

FILED

This matter came before me as a bench trial on October 18 and 19, 2017. There is one cause of action in Plaintiffs' Amended Complaint, promissory estoppel. Based on the pleadings, the witnesses' testimony, the exhibits, the trial briefs, and post trial memoranda submitted by counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The four (4) Plaintiffs are retired fire fighters who were all employed with Defendant City of North Charleston at the time of their retirement.
2. Plaintiff Rissanen worked for the City of North Charleston for 35 years. He retired on September 30, 2005. At the time of his retirement, he was the Fire Chief and he had held that position for 13 years.
3. Plaintiff Baxley worked for the City of North Charleston for 34 years. He retired on June 30, 2005. At the time of his retirement, he was the Personnel Chief and he had held that position for 7-8 years.
4. Plaintiff Hood worked for the City of North Charleston for 33 years. He retired in 2005. At the time of his retirement, he was an Assistant Fire Chief.

5. Plaintiff Forner worked for the City of North Charleston for 27½ years. He retired in June of 2009 shortly after receiving a letter from Mayor Summey indicating that employees who retired after July 1, 2009, would be treated differently than those who had retired before July 1, 2009. At the time of his retirement, Plaintiff Forner was a Battalion Chief. Plaintiff Forner had to purchase 2 ½ years of retirement to be able to retire in 2009, at a cost to him of \$20,000.

6. Three (3) of the Plaintiffs are currently paying between \$130.00 and \$140.00 every month to purchase a Medicare Supplement Policy (or about \$1,680.00 annually.) The Plaintiffs testified that the cost of a Medicare Supplement Policy increases each year. Plaintiff Forner testified he estimates that when he turns age 65, the cost to purchase a Medicare Supplement Policy will likely be greater than \$140 per month.

7. The City of North Charleston has a “strong mayor” form of government pursuant to S.C. Code Ann. §5-9-20. R. Keith Summey is the Mayor of North Charleston.

8. Pursuant to S.C. Code Ann. § 5-7-272, municipal ordinances that have been approved by City Council in two (2) readings have the force of law.

9. All municipal ordinances must be codified per S.C. Code Ann. § 5-7-290.

10. North Charleston first codified its municipal ordinances in 1986. (Ord. 1986-29.)

11. North Charleston Ordinance No. 1984-23 is included in the City’s codification.

12. North Charleston Ordinance No. 1984-23 states, in pertinent part, “Be it ordained by the Mayor and City Council of the City of North Charleston . . . : Upon retirement from the City, employees who meet the requirements listed below have the option to retain health, life, and dental insurance under the City’s group plan by paying the applicable rate budgeted for full time active employees . . . : Police/Fire: age 55 or 30 years

covered service, or early retirement age 50 or 25 years covered service.” The ordinance goes on to state that “Coverage will terminate upon failure of the retiree to make the required advance payment, upon termination of the City’s group plan, or when determined to be in the best interest of the City.”

13. North Charleston City Council has never repealed Ord. No. 1984-23.

14. The manner to amend City ordinances is stated in the North Charleston City Code (North Charleston City Code, Section 1-5) and North Charleston City Council has never amended Ord. No. 1984-23.

15. In May of 1998, while Plaintiffs were still employed and shortly after Mayor Keith Summey assumed the position of Mayor, Mayor Keith Summey wrote a memo to the Finance Committee of Council where he delineated his plan to provide retirees with free retiree health insurance

16. Whereas Ord. 1984-23 merely stated that after working a certain number of years, retirees could remain on the City’s health insurance plan paying the same amount fulltime employees paid, Mayor Summey’s Memo acknowledged the fact that Medicare would become available to retirees at age 65, and that when retirees turned 65 and went on Medicare, the City would pay the cost of a Medicare Supplement Policy for them so their health insurance would continue to be free.

17. In this 1998 Memo, Mayor Summey also acknowledged that if retirees had family plans their dependents would also be covered until they were Medicare eligible.

18. Specifically, in this 1998 Memo, Mayor Summey stated retirees would receive: 1) free single coverage health insurance when they retired if they had worked for the City for 30 years (or a smaller percentage paid if they retired with less than 30 years’ service); 2) a free Medicare supplemental health insurance policy when they became eligible for Medicare at age

65; and 3) the continuation of health care coverage for their spouse and/or dependents on a City health insurance policy until their spouse and/or dependents became Medicare eligible.

19. Defendant's Finance and Human Resources employees were authorized to provide information to employees regarding retiree health insurance and they confirmed and explained to employees the Mayor's promise when asked about it after 1998.

20. Defendant operates under a Mayor-Council form of government in which the Mayor is the Chief Administrator of the City.

21. As Chief Administrator, the Mayor is responsible for appointing all employees and directing and supervising the administration of all departments. (S.C. Code § 5-9-30.)

22. As Chief Administrator, the Mayor has the responsibility of appointing all employees and directing and supervising the administration of all departments, including establishing personnel policies. (North Charleston Code of Ordinances Sections 2-96, 2-176.)

23. The Mayor can draw on City funds with the Finance Director's approval. (*Id.* at Section 2-86)

24. City Council cannot repeal by ordinance obligations assumed by the City fixing the salaries of employees of the City. (*Id.* at Section 2-113.)

25. The City implemented the Mayor's 1998 interpretation of Ordinance 1984-23 from 1998 until 2009.

26. Plaintiffs testified they trusted HR Director Bob Cannella and Mayor Summey when they made promises about free health insurance for retirees because Bob Cannella and Mayor Summey had authority as Mayor and Finance Department Head to make those promises. Additionally, they testified (and the Mayor agreed) that the Mayor had made the promises repeatedly through the years at staff meetings and luncheons and at different fire stations to hundreds of employees. Plaintiffs testified they knew they could count on the Mayor because he

had never broken a promise to them and was a man of his word. It is undisputed that the Mayor confirmed the promises made in his 1998 Memo verbally on many occasions.

27. Defendant's Mayor used the promise of free retiree health insurance as a recruiting tool to keep firefighters, including Plaintiffs, employed by the City. Plaintiffs testified when firefighters would complain about low wages or consider leaving the City, Defendant's Mayor would point to the promise of free retiree health insurance and boast to the employees, "You've got a honey of a deal."

28. Plaintiff Rissanen, a former Fire Chief for Defendant, testified that the City's Fire Department personnel were paid less than other municipalities, that the promise of the City paying the cost of retiree health insurance was an inducement for fire personnel to remain employed by the City, and the promise of free retiree health insurance for life reduced turnover.

29. When three (3) of the Plaintiffs (Rissanen, Baxley and Hood) retired in 2005, they began obtaining what they were promised. Specifically, they remained on the City's health plan with the City paying the cost of their single coverage health insurance. None of these Plaintiffs were Medicare eligible at the time they retired.

30. In 2009, accounting practices changed for political entities, and cities and counties were required to begin accounting for their contingent liabilities in the same manner as private businesses. This meant that for the first time the City had to set aside funds that were sufficient to meet their future financial obligations to its retirees.

31. Mayor Summey sent Plaintiffs and other employees a letter in 2009 indicating the City would continue to pay all of or a percentage of the cost of retiree health insurance until age 65, but for employees retiring after June 30, 2009, all healthcare benefits would cease once an employee became eligible for Medicare.

32. In effect, the City was renegeing on two (2) of the three (3) parts of its promise: it would continue to provide free health insurance to retirees until age 65 when they became eligible for Medicare, but it would no longer pay the cost of a Medicare supplement which meant retiree health care would no longer be free after the age of 65. Additionally, the City would no longer allow retirees' spouses to be covered by the City's self-insured health insurance program once a retiree turned 65. However, this promise was never conveyed directly to the retirees' dependents and the City never shared costs for eligible dependents of retirees to participate in the plan.

33. Between 2009 and 2011, the Mayor met with Plaintiffs Rissanen and Baxley and Plaintiffs Rissanen and Baxley were assured by the Mayor, City Council members, and HR personnel that they would be not treated differently as they had already retired so they were grandfathered in. Plaintiffs Rissanen and Baxley relayed this information to the other Plaintiffs and retirees.

34. The former HR Director, Bob Canella, repeatedly assured Plaintiff Rissanen he would be grandfathered.

35. City Councilmembers Rhonda Jerome and Bob King assured Plaintiff Baxley he would be grandfathered.

36. Nevertheless, at some time after 2011, Plaintiffs realized that these representations were probably not true and that the City intended to break its promise to them. In fact, the City stopped paying the cost of Plaintiffs' Medicare supplement when Plaintiffs Rissanen, Baxley and Hood reached age 65 and the City has refused to provide health insurance for Plaintiffs Rissanen's and Baxley's wives.

37. The Plaintiffs filed this lawsuit on May 31, 2013. The City contends that their claims are barred by the three year statute of limitations because it began to run in 2009 when

Plaintiffs received the letter from the City stating all healthcare benefits will cease once a retiree becomes Medicare eligible. Absent the City's continued promises that the Plaintiffs would be grandfathered into the former retirement system, the statute would in fact begin to run on the date of the City's letter. However, as stated more fully below, the City's actions bars them from asserting the statute of limitations as a defense.

38. Plaintiffs Rissanen's and Baxley's wives are currently on COBRA which will end shortly for Plaintiff Baxley's wife, and in a year or so for Plaintiff Rissanen's wife.

39. The City's Finance Director Warren Newton testified the City's annual budget is about \$120 million dollars. Of that amount, Mr. Newton testified about 6.5 million dollars is spent on health care for all of its 1100 employees, or about 6.5% of its budget. In 2009, there were only about 67 retired employees receiving free health insurance.

40. The cost to the City of paying for these four (4) Plaintiffs' Medicare Supplement Policies and/or their and their dependents' insurance until age 65 is an extremely small percentage of the City's budget.

CONCLUSIONS OF LAW

1. "[A]n estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice." *Higgins Constr. Co. v. S. Bell. Tel. & Tel. Co.*, 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981).

2. "The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the

promise is made must sustain injury in reliance on the promise.” *Bishop v. City of Columbia*, 401 S.C. 651, 664 (Ct. App. 2013) citing *Woods v. State*, 314 S.C. 501, 505 (Ct. App. 1993).

3. Promissory estoppel is used where the refusal to apply it would sanction the perpetration of a fraud or would result in other injustice. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (quoting *Citizens Bank v. Gregory’s Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). South Carolina courts recognize a remedy in equity in a promissory estoppel claim. *Satcher v. Satcher*, 351 S.C. 477, 483-484, 570 S.E.2d 535, 538 (Ct. App. 2002); *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). The principle that equity “regards as done that which ought to be done” applies in cases where the party seeking equitable relief establishes “a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.” *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011) (citing *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, “courts look to the substance and intent of the parties, and give a construction consistent with such intent.” *Regions Bank*, 394 S.C. at 253-254, 715 S.E.2d at 354-355 (quoting *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480 (1842)). Once a party establishes an equitable right, the court may dispense with formalities that would defeat the equity. *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. Where a substantive right

exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004).

4. The promise of free retiree health insurance was not ambiguous. The fact that the City complied with its promise for several years is direct evidence that the promise was unambiguous and capable of being fulfilled. In fact, Defendant City is still complying with part of its promise, paying the cost of single coverage retiree health insurance until the retirees reach age 65. Defendant cannot contend that the promise is so ambiguous that it cannot be fulfilled when it continues to keep part of the promise and was very clear on what part of the promise it was not going to keep per the Mayor's 2009 letter. In fact, Mayor Summey acknowledged that a promise had been made and he testified would have continued doing what had promised if he could have financially, which indicates the promise was clear enough that all parties understood its terms and clear enough that it could easily be fulfilled if the City so chose.

5. Upon consideration of the totality of the circumstances, this Court concludes that the Plaintiffs' reliance on the promise of free retiree health insurance for life was reasonable despite the discretionary language contained with Ord. No. 1984-23 stating "[c]overage will terminate . . . when determined to be in the best interest of the City." *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337-38 (Ct. App. 2000) ("A determination of justifiable reliance involves the evaluation of the totality of the circumstances, including the positions and relations of the parties."). A party's reliance on a representation is not unreasonable, unexpected, or unforeseeable as a matter of law when testimony indicates that the representations were "not uncommon" within the setting in which they were made. *See Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). Here, there was ample evidence that the Plaintiffs' reliance was reasonable because of the circumstances surrounding the promise, the

context in which the promise was made and repeated, and the position of the parties making the promise.

6. The final element of promissory estoppel requires demonstrating that the reasonably relying promisee sustains injury due to a disposition inconsistent with alleged promise. *Craft v. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In *Craft*, promissory estoppel was found not to exist as the plaintiff's unemployed status was due to an external factor. Similarly, *Barnes v. Johnson*, 402 S.C. 458, 475, 742 S.E.2d 6, 15 (Ct. App. 2013), is distinguished from the facts in this case as in *Barnes* case, an external factor (a fire) destroyed the property at issue. These cases are distinguishable from the case at hand because, here, each of the Plaintiffs has suffered injuries resulting directly from Defendant's actions. Specifically, Plaintiffs have paid more and are paying more for health insurance than they would have because Defendant did not keep its promise.

7. In reliance on Defendant's promises, Plaintiffs accepted lower wages, turned down job offers or did not seek other employment, retired earlier than they would have, and did not fully pursue jobs with higher earning potential.

8. Defendant contends that a promise for future benefits is an unenforceable violation of public policy. This Court disagrees. The future benefits the Plaintiffs were continuously promised was the basis for their reasonable reliance. To say that a promise for future benefits is a violation of public policy would effectively void the doctrine of promissory estoppel.

9. The facts in this case are similar to the facts in a case involving retired firefighters in Columbia, S.C. where the Court of Appeals reversed summary judgment finding there was a scintilla of evidence to support a claim for promissory estoppel and remanded the case for trial. (*Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)).

10. In *Bishop*, a similar argument was made by Defendant City of Columbia as by Defendant in this case. Specifically, the City of Columbia, citing the case of *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996), argued that the decision to provide free retiree health insurance based on the number of years worked is a legislative, not a business decision and that one legislative body cannot bind a future legislative body. However, that particular argument is not relevant here as the Court of Appeals only considered this argument as it related to a governmental entity's *contractual* obligations and Plaintiffs have not brought a contract claim in this case as the plaintiffs did in *Bishop*; here, Plaintiffs have only alleged a promissory estoppel claim.

11. In *Bishop*, the Court of Appeals did not decide this particular issue as it dismissed the contract cause of action on other grounds.

The City also argues, and Retirees dispute, that summary judgment on the contract claims was appropriate because: (1) Retirees were "at-will" employees; (2) contracts for continuing free health insurance would violate public policy; and (3) Retirees could not have a permanent right to free lifetime health insurance under *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996). Because we affirm the grant of summary judgment against the contract claims on other grounds, we need not address these arguments.

Bishop supra, 401 S.C. 651, 663, 738 S.E.2d 255, 261.

12. Additionally, Defendant City operates under a Mayor-Council (strong Mayor) form of government in which the Mayor is the Chief Administrator of the City. Our Supreme Court held in *Townes Associates, Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976) that a city's chief administrator has the authority to enter into contracts on behalf of the city to further its policies. Here, the policy of the City to provide free retiree health insurance is reflected in Ord. 1984-23. Therefore, the Mayor did not act outside the scope of his employment by making representations to City employees regarding payment of the cost of retiree health insurance by

the City as that is the type of representation for which he is responsible for as Chief Administrator.

13. The promise in this case involved payment of money, or additional wages, and a promise of wages in the future can be part of an employee's salary. The South Carolina Payment of Wages Act defines wages as "*all amounts at which labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee *under any employer policy or employment contract.*" *S.C. Code § 41-10-10* (emphasis added). The future wages promised to Plaintiffs are compensation for work which had already been performed by them. Plaintiffs worked for the City for the requisite number of years to obtain insurance that would cost them nothing (or almost nothing in Plaintiff Forner's case) and, thus, the promise had significant value which is an easily ascertainable monetary amount. Further, in *Bishop*, the Court of Appeals referred to the promise of retiree health insurance as a promise for "free" insurance, indicating its agreement that the promise involved the money value of the insurance and not just a future benefit.

Retirees also testified that several supervisors informed them they would receive *free* health insurance for life during their individual merit interviews and evaluations, which were incidental to the supervision of their employment. Therefore, the employment review context during which the representations were made provides a scintilla of evidence to suggest the representations and promises were within the supervisors' authority and reasonably relied upon.

Bishop v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013) (emphasis added).

The Court of Appeals considered and ruled that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now—that its claim for benefits rather than a claim for money. By allowing the *Bishop* case to go forward, the Court of

Appeals rejected Defendant's argument that the promise was unenforceable because it was a promise for future benefits.

14. The City's mere failure to enforce an ordinance by failing to fund it does not amend or repeal the ordinance. The enforcement of an ordinance is discretionary. North Charleston's failure to enforce Ord. No. 1984-23 by not funding it does not amend or repeal that Ordinance. In this case, the 1984 Ordinance is evidence of Defendant's policy of paying the cost of retiree health insurance which was reflected in the Mayor's actions and promises in 1998 and subsequently through the years.

15. Defendant argues the Tort Claims Act (S.C. Code § 15-78-60 (4)) absolves Defendant of liability. However, Plaintiffs' only cause of action is a promissory estoppel claim which is a quasi-contract claim, so the Tort Claims Act is not relevant to this case. *See, North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

16. Plaintiffs' claims are not barred by the statute of limitations. Plaintiffs had many discussions with Defendant's Mayor and HR personnel after receiving the Mayor's letter in May of 2009. For at least two years after May of 2009, Defendant continued to represent that Plaintiffs would be "grandfathered." The Mayor's May 2009 letter stated that proposed changes would go into effect in June 2010 inferring that employees retiring before June 1, 2009 would be treated differently than employees retiring after June 1, 2009. A memorandum authored by Mayor Summey confirmed that grandfathering was being discussed. Plaintiffs were not on notice that Defendant had decided not to grandfather them until after 2011. In fact, Plaintiffs testified they believed the Mayor was an outstanding mayor who could make things happen, and was a man of his word. As late as 2011, Mayor Summey told Plaintiffs he wanted to keep the promise and would try to find a way to do so and was directing City employees to find a way to help Plaintiffs.

17. “[A] defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant’s conduct.” *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007) (quoting *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997)). Here, the Mayor and the City’s HR and administrative personnel continued over the course of many months after the Mayor’s 2009 letter to assure Plaintiffs verbally and in writing that they would be grandfathered; the City even arranged for Plaintiffs to meet with an insurance company. The City’s conduct was intended to, and did, induce the Plaintiffs to hold off filing a lawsuit as they believed that the promises made to them would be kept.

18. Plaintiffs are entitled to an equitable remedy. In *Dockins v. Ingles Mkts.*, 306 S.C. 496, 497, 413 S.E.2d 18, 18-19 (1992), the Court held equitable relief included employment, reinstatement, and promotion; the idea being to put the employee back in the position he would have been. “[A] plaintiff could seek restitution in equity, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession . . . for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession.” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213-214 (2002). Contrary to Defendant’s argument, reliance damages can be money damages.

19. Back pay is an equitable remedy because it is a form of restitution. *Curtis v. Loether*, 415 US 189, 197 (1974). Here, restitution takes the form of money owed to Plaintiffs Rissanen, Baxley and Hood not as back pay, but as reimbursement to them for their purchase of Supplemental Medicare policies which the City should have purchased on

their behalf. The amount of restitution is easily ascertainable year to year. The three (3) Plaintiffs (Rissanen, Baxley, and Hood) who have already had to pay the cost of Medicare Supplement policies out of their pocket should be repaid these amounts.

20. An equitable remedy can also include the damages caused when a plaintiff sustains injury by quitting his job in reliance on a promise. *Craft v. S.C. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In Plaintiff Forner's case, he resigned before working for 30 years because he received a letter from the Mayor in 2009 indicating employees who retired before June of 2009 would be treated differently than those who retired after that date. By retiring early to obtain the benefit of what was promised to him, he failed to qualify for free insurance until age 65 as he only worked 28 years so he has been paying 16.5% and will continue to pay 16.5% of the cost of his insurance until age 65.

21. Due the Court's inability to force the City to change its budget to account for the cost of the Plaintiff's Medicare supplement policies, a lump sum shall be awarded to the Plaintiffs in the form of a judgment against the City.

22. Plaintiffs are entitled to attorney fees as they prevailed against a state entity. S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

Id. (emphasis added).

Defendant is a political subdivision of that State. Plaintiffs are the prevailing party, the City acted without substantial justification when it broke its promise. The cost to the City to keep its promise to these four (4) Plaintiffs was very minimal. There also appears to be no special circumstances presented by the City that would make an award of attorney fees unjust.

For all of the above reasons, I Order as follows:

1. Plaintiffs Rissanen, Forner, Baxley, and Hood shall be reimbursed the cost for any and all Medicare Supplement Policies they have purchased and will continue to purchase;
2. After considering the expert testimony, I conclude the Plaintiffs are entitled to \$214,236.15 as a judgment against the City. This includes actual damages, attorney's fees, and costs. The breakdown is shown on Exhibit A of this Order and attached and made part hereof;
3. The City of North Charleston is not responsible for purchasing or reimbursing the Plaintiffs for their dependent's policies.
4. Plaintiff Forner is not entitled to the \$20,000 he paid to qualify for retirement.
5. After consideration of the factors used for evaluating reasonable attorney's fees, this Court finds Plaintiffs' attorney fees and costs in the amount of \$51,100.00 reasonable and must be paid by the City pursuant to S.C. Code 15-77-300.
6. Plaintiffs are not entitled to compensation for their spouses concerning insurance matters.

AND IT IS SO ORDERED.

November 9, 2018
Charleston, South Carolina

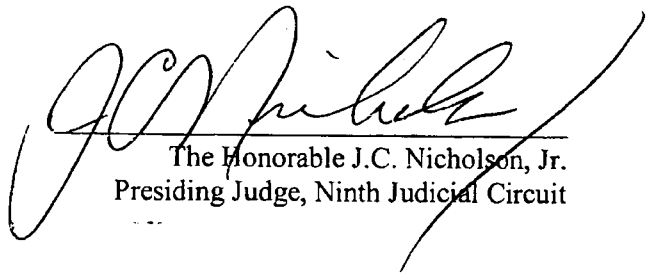

The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

EXHIBIT A**Plaintiffs' Allocation¹:**

Alvar R. Rissanen - \$43,556.00

Michael H. Baxley - \$42,740.00

Willie L. Hood - \$38,633.00

Clifford W. Forner - \$31,255.00

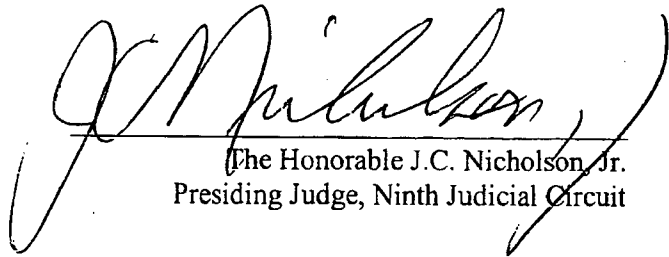
Total Plaintiff Amount - \$156,183.00

FILED
2018 NOV 13 PM 2:04
CLERK OF COURT

Attorney's fees based upon the Amended Affidavit is as follows²:

Attorney's Fees - \$55,335.00

Costs - \$2,713.15



The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

November 9, 2018
Charleston, South Carolina

¹ The breakdown shown for each respectful Plaintiff is shown in Plaintiff's Exhibit 11. Plaintiff's Exhibit 11 is a part of this Order by reference.

² The Amended Affidavit in Support of Attorney's Fees is filed with the Charleston County Clerk of Court. The Affidavit is a part of this Order by reference.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-3210

Alvar R. Rissanen ET AL
PLAINTIFF(S)

City of North Charleston
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☒ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, THE CLERK OF COURT, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court. The Court has considered Defendant's Motion to Alter or Amend filed on November 26, 2018 and respectfully denies the motion.

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
N/A		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

01/31/2019
Date

2
kct

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alvar R. Rissanen, Michael H.)
Baxley, Clifford W. Forner, and)
Willie L. Hood,)
)
Plaintiffs,)
)
v.)
)
City of North Charleston,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-3210

**CONSENT ORDER
ALLOWING DEPOSIT OF
JUDGMENT WITH COURT**

FILED
2019 FEB 22 AM 11:07
JULIE ANN STRONG
CLERK OF COURT

The case was tried before the Court on October 18 and 19, 2017. On February 6, 2018, the Court issued an Order (the "First Order") containing findings and conclusions regarding the October 2017 trial. Thereafter, on February 23, 2018, Defendant filed a Motion to Alter or Amend the First Order pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure.

On March 28, 2018, the Court held a hearing regarding the First Order. Thereafter, on November 8, 2018, the Court reopened the trial and accepted testimony and other, additional evidenced from Plaintiffs and Defendant.

Subsequently, on November 9, 2018, the Court issued an Order (the "Second Order") containing new findings and new conclusions regarding the October 2017/November 2018 trial. On November 26, 2018, Defendant filed its Motion to Alter or Amend the Second Order, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. On February 5, 2019, the Court issued its Order denying Defendant's Motion to Alter or Amend the Second Order.

Defendant now requests, pursuant to Rule 67, SCRCPP, the Court allow it to deposit the full amount of the judgment against it to stop accrual of post-judgment interest. Plaintiffs consent to Defendant's request.

Rule 67, SCRCPP, allows a party against whom judgment is rendered to deposit the sum of that judgment with the Court, stating:

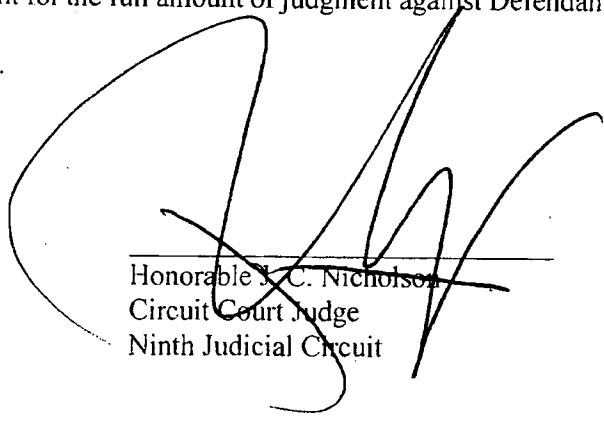
In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution authorized to receive public funds, and shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.

Rule 67, SCRCPP.

South Carolina courts recognize "a judgment debtor's deposit of funds into court pursuant to Rule 67 pending his own appeal stops the accrual of interest on the judgment." *Renaissance Enterprises, Inc. v. Ocean Resorts, Inc.*, 334 S.C. 324, 326, 513 S.E.2d 617, 618 (1999). *See also Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995). "The rationale was that 'such a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available.'" *Id.* (citing *Russo* at 442). Providing Defendant the ability to deposit its judgment into the Court assures Plaintiffs recover those funds to the extent their award is affirmed on appeal, saves Defendant from the accrual of post-judgment interest pending appeal, and guards against the danger of paying a judgment to the Plaintiffs that is overturned or modified on appeal and cannot be repaid.

It is therefore ordered that Defendant's request is granted and directs that the Charleston County Clerk of Court accept any payment for the full amount of judgment against Defendant and made to the Clerk of Court by Defendant.

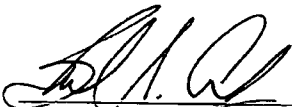
IT IS SO ORDERED.



Honorable J. C. Nicholson
Circuit Court Judge
Ninth Judicial Circuit

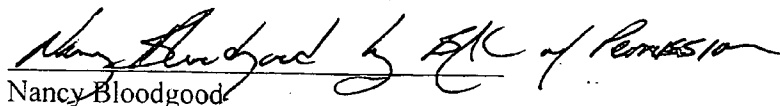
February 14, 2019

WE MOVE AND CONSENT:



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Emmanuel J. Ferguson
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ATTORNEY FOR PLAINTIFFS

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LABOR AND EMPLOYMENT DEFENSE

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BOB J. CONLEY
EMMANUEL J. FERGUSON

*CERTIFIED SPECIALIST
LABOR & EMPLOYMENT LAW

TELEPHONE: (843) 577-9626
FACSIMILE: (843) 577-6672

February 13, 2019

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: *Alvar R. Rissanen et al. v. City of North Charleston*,
Civil Action No.: 2013-CP-10-3210

Dear Ms. Armstrong:

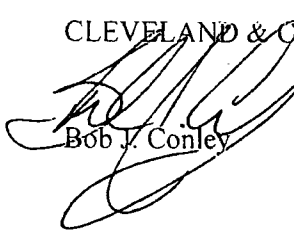
Enclosed, please find one original and one copy of a proposed Consent Order Allowing Deposit of Judgment with Court, a fully executed Motion and Order Information Form, and a check for \$25.00 to cover the cost of the filing fee, pertaining to the above-referenced matter.

Upon review and approval, we are requesting the original be filed with the court, and a file-stamped copy be returned to our attention using the enclosed, envelope provided.

Thank you, in advance, for your assistance with this matter and should you have any questions, please feel free to contact me.

Sincerely,

CLEVELAND & CONLEY, LLC



Bob J. Conley

BJC/lmp
Enclosures as stated
cc: Nancy Bloodgood, Esquire

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alvar R. Rissanen; Michael H. Baxley,
and Willie L. Hood,

Plaintiffs,

vs.

City Of North Charleston,
Defendant.

2013 MAY 31 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-

3210

**COMPLAINT
(JURY TRIAL REQUESTED)**

Plaintiffs, by and through their undersigned attorneys, complain against Defendant and
allege as follows:

JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of Charleston Counties in the State of South Carolina. All Plaintiffs are retired City of North Charleston employees.
2. One (1) Plaintiff has already suffered, and two (2) Plaintiffs will imminently suffer, damages as a result of Defendant's actions.
3. The damages Plaintiffs have already, or will suffer, are real monetary damages, not abstract damages.
4. Plaintiffs' damages, as explained herein, are the direct result of Defendant's wrongful actions.
5. A decision by this Court in this case will resolve Plaintiffs claims.
6. There exists a justiciable controversy regarding the rights of the Plaintiffs pursuant to the terms of verbal promises made to them, and this determination is ripe for a decision and is not moot.

7. Defendant City of North Charleston ("Defendant City") is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina which owns property and does business in the County of Charleston in South Carolina.

8. All actions pertinent to the allegations in this Complaint took place in Charleston County.

9. Jurisdiction and venue is proper in this Court.

COMMON FACTS

10. Defendant City has a "strong mayor" form of government pursuant to S.C. Code §5-9-20 and R. Keith Summey is its Mayor.

11. In 1998, Mayor Summey told Defendant City's Finance Committee that he wanted to provide health insurance to persons retiring from Defendant City. He stated, "Our employees are our greatest asset and extending health insurance to those retiring from the City payroll will provide a very useable benefit."

12. Mayor Summey accordingly promised, and Defendant City agreed as follows: a) Defendant City would pay an increasing percentage of the cost of each retiree's single coverage health insurance premium based on the retiree's years of service until the retiree became Medicare eligible; b) when the retiree became Medicare eligible or was age 65, Defendant City promised to provide and pay the entire cost of a supplemental Medicare health insurance policy for that retiree; and c) for retirees who chose family coverage instead of single coverage when they retired, Defendant City promised that when the retiree became Medicare eligible, their spouses and/or dependents would still have health insurance with the City until they reached the age of 65 or became Medicare eligible, paid for by the retiree.

13. Specifically, Mayor Summey promised, and Defendant City agreed, that employees retiring with fifteen (15) years' service would have fifty percent (50%) of their single coverage health insurance premium paid by the City; employees retiring with twenty (20) years' service would have two thirds (66.6%) of their single coverage health insurance premium paid by the City; employees retiring with twenty-five (25) years' service would have eighty-three point two (83.2%) of their single coverage health insurance premium paid by the City; and employees retiring with thirty (30) years' service would have one hundred percent (100%) of their single coverage health insurance premium paid by the City.

14. Retirees who chose family coverage instead of single coverage when they retired were not penalized. Rather, Defendant City promised that as long as the retirees were alive they were eligible to obtain and pay the cost of health insurance through the City for their spouses and/or dependents until such time as their spouses and/or dependents became Medicare eligible. In other words, even if the retirees became Medicare eligible, they were promised that their spouses and/or dependents could pay for and obtain health insurance through the City until they reached the age of 65 or became Medicare eligible.

15. Mayor Summey's promises to Defendant City's retirees were fulfilled in full by Defendant City until June 30, 2010.

16. In May of 2009, Defendant City notified its retirees that starting June 30, 2010, "once a retiree becomes eligible for Medicare, all healthcare benefits provided by the City of North Charleston will cease."

17. Prior to June 30, 2010, the Defendant City, in fulfillment of its promises, had purchased a Medicare supplemental insurance policy for all retirees when they became eligible for Medicare and had also continued to allow the retirees to purchase family coverage for their

spouses and/or dependents who were not yet Medicare eligible so their spouses and/or dependents remained insured.

18. Plaintiffs have all been retired from Defendant City since 2005.

19. On many occasions since 1998 these Plaintiffs were told by City personnel department representatives, in public statements by the Mayor, and in verbal and written communications by Defendant City personnel that they would receive from Defendant City free single coverage insurance if they retired after thirty (30) years of service (which they all did), a free supplemental Medicare health insurance policy when they turned 65 or became Medicare eligible, and continued insurance coverage for their spouses and/or dependents until their spouses/dependents became Medicare eligible.

20. Plaintiff Hood received free single coverage health insurance by Defendant City from the time he retired in 2005 until he reached age 65 in 2011. At age 65 when Plaintiff Hood became eligible for Medicare, Defendant City refused to purchase a supplemental Medicare health insurance policy for him as promised and Plaintiff Hood had to purchase a policy using his own funds.

21. Plaintiffs Rissanen and Baxley have been provided family coverage health insurance by Defendant City since the time they retired in 2005 until present. These Plaintiffs have their younger wives who are on their health insurance policies and Defendant City's health insurance is the only health insurance their wives have. When Plaintiffs Rissanen and Baxley reach age 65 in a few years, not only will Defendant City fail to provide them with a free supplemental Medicare insurance policy for themselves but their wives will suddenly be without any health insurance at all as they will be too young for Medicare.

22. Plaintiff Rissanen was Defendant City's Fire Chief for thirteen years. Chief Rissanen hosted annual meetings at which Mayor Summey and other Defendant City officials would appear each year and personally promise the assembled fire fighters they would receive free single coverage health insurance until they became Medicare eligible, then they would receive a free supplemental Medicare insurance policy, and their spouses and/or dependents would be able to remain on the City's insurance plan until they were Medicare eligible.

23. Specifically, Plaintiff Rissanen recalls hearing Mayor Summey telling the assembled fire fighters, "You've got it made"; "We've got you covered"; and "You have a honey of a deal" when he repeatedly explained what the City would provide its retirees.

24. Bob Connella, Defendant City's former Personnel Director, told Plaintiff Rissanen that Defendant City might not be able to afford to pay an increasing percentage of the cost of each retiree's single coverage health insurance premium based on the retiree's years of service until the retiree became Medicare eligible and pay the entire cost of a supplemental Medicare health insurance policy for retirees and allow retirees' spouses and/or dependents to remain on the City's health insurance policy until they reached the age of 65 "forever" but he assured him not to worry as all of the retirees would be "grandfathered."

25. Plaintiff Baxley who had been the Personnel Chief for the Fire Department was required as part of his job responsibilities to promise job applicants a free single coverage health insurance after thirty (30) years of service, a supplemental Medicare health insurance policy, and continued health insurance coverage for retirees' spouses and/or dependents as part of their compensation packages. Plaintiff Baxley repeated these promises when he was recruiting employees and when he was trying to retain employees.

26. Plaintiffs continued to work for Defendant City for thirty (30) years in order to earn the promised free single coverage health insurance when they retired, free supplemental Medicare health insurance policy, and continued insurance coverage for their spouses and/or dependents as promised.

27. Plaintiffs made long term financial decisions for themselves and their families based on Defendant City's promises.

28. Based on Defendant City's promises, Plaintiffs accepted lesser salaries while employed than their peers received in exchange for Defendant City's promises.

29. Plaintiffs could have left employment with Defendant City but the promises of free single coverage health insurance, a free Medicare supplemental health insurance policy, and the continuation of health care coverage for their spouse and/or dependents when they became Medicare eligible induced them to stay employed with Defendant City.

30. Based on Defendant City's verbal and written promises and representations, Plaintiffs had no reason to believe that the promises of free single coverage health insurance, a free Medicare supplemental health insurance policy, and the continuation of health care coverage for their spouse and/or dependents when they became Medicare eligible would be subject to change after they retired.

FACTS AS TO EACH INDIVIDUAL PLAINTIFF

31. Plaintiff Rissanen retired from Defendant City in 2005 as Fire Chief with more than 30 years of service.

32. Plaintiff Rissanen has paid for and received family health insurance from Defendant City since his retirement.

33. Plaintiff Rissanen will turn sixty-five (65) in about three (3) years and at that time when he becomes Medicare eligible, he will have to start paying a significant amount of money out of his pocket for a supplemental Medicare health insurance policy and also for private health insurance for his wife as Defendant City has told Plaintiff Rissanen it will stop allowing his wife to be covered by Defendant City's insurance when he becomes Medicare eligible.

34. Plaintiff Rissanen has already investigated different types and costs of family coverage for his wife and he understands from several private insurance companies that because his wife has pre-existing health conditions, she is uninsurable and health insurance coverage for her will be so expensive that it will be unaffordable to him.

35. Plaintiff Rissanen's wife is nine (9) years younger than he is. She has been on Plaintiff Rissanen's family health insurance policy for many years. When Plaintiff Rissanen becomes Medicare eligible, as Defendant City has told Plaintiff Rissanen it intends to stop his insurance coverage completely, even though Plaintiff Rissanen will have Medicare coverage his wife will have no insurance coverage at all and it will be years before she will be eligible for Medicare.

36. The health insurance promised to Plaintiff Rissanen for his spouse and/or dependents years ago would have provided his wife continued health insurance coverage until she reached the age of 65. Had Plaintiff Rissanen known Defendant City was going to breach its promises to him, he or his wife could have taken steps to obtain alternate health insurance coverage years ago, but now it is too late.

37. Plaintiff Rissanen cannot wait until his wife loses health insurance coverage to ask this Court for a declaration of his rights.

38. Plaintiff Baxley retired from Defendant City in 2005 as Assistant Fire Chief with more than thirty (30) years of service.

39. Plaintiff Baxley has paid for and received family health insurance from Defendant City since 2005.

40. Plaintiff Baxley will turn sixty-five (65) in about three (3) years and at that time when he becomes Medicare eligible, he will have to start paying a significant amount of money out of his pocket for a supplemental Medicare health insurance policy and also for private health insurance for his wife as Defendant City has told Plaintiff Baxley it will stop allowing his wife to be covered by Defendant City's insurance when he becomes Medicare eligible.

41. Plaintiff Baxley has already investigated different types and costs of family coverage for his wife and he understands from several private insurance companies that because his wife has pre-existing health conditions, she is uninsurable and health insurance coverage for her will be so expensive that it will be unaffordable to him.

42. Plaintiff Baxley's wife is three (3) years younger than he is. She has been on Plaintiff Baxley's family health insurance policy for many years. When Plaintiff Baxley becomes Medicare eligible, as Defendant City has told Plaintiff Baxley it intends to stop his insurance coverage completely, even though Plaintiff Baxley will have Medicare coverage his wife will have no insurance coverage at all and it will be three years before she will be eligible for Medicare.

43. The health insurance promised to Plaintiff Baxley for his spouse and/or dependents years ago would have provided his wife continued health insurance coverage until she reached the age of 65. Had Plaintiff Baxley known Defendant City was going to breach its

promises to him, he or his wife could have taken steps to obtain alternate health insurance coverage years ago, but now it is too late.

44. Plaintiff Baxley cannot wait until his wife loses health insurance coverage to ask this Court for a declaration of his rights.

45. Plaintiff Hood retired from Defendant City in 2005 as Assistant Fire Chief with more than 30 years of service.

46. Plaintiff Hood started receiving free single coverage health insurance when he retired because his wife had health insurance through her job and he did not need family coverage.

47. Plaintiff Hood turned sixty-five (65) and became eligible for Medicare in January of 2011 at which time Defendant City refused to provide him a free supplemental Medicare health insurance policy as it had promised.

48. In early 2011, Plaintiff Hood had to purchase a supplemental Medicare health insurance policy that currently costs him over \$100 per month.

FIRST CAUSE OF ACTION
(PROMISSORY AND EQUITABLE ESTOPPEL)

49. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

50. At various times, Defendant City has made specific verbal and written representations and promises to Plaintiffs.

51. Plaintiffs relied on Defendant City's promises and continued to work for Defendant City when they might have obtained other job positions, in order to obtain free and reduced cost health insurance.

52. Plaintiffs' reliance was reasonable based on Defendant City's explicit promises and Defendant City's past conduct.

53. Defendant City's promise to Plaintiffs that their compensation included free single coverage health insurance when they retired, a free Medicare supplemental health insurance policy when they became Medicare eligible, and the continuation of health care coverage for their spouse and/or dependents until their spouse and/or dependents became Medicare eligible was clear and not ambiguous.

54. Plaintiffs had no way of knowing that Mayor Summey and Defendant City would break the promises that had been repeatedly made to them.

55. Plaintiffs reasonably relied upon Defendant City's promises not only because the promises were repeatedly made to them and their co-workers while they were employees, but because these promises were fulfilled for several years after Plaintiffs retired.

56. Under Defendant City's form of government, a Mayor's determination of how to compensate employees is lawful.

57. Plaintiffs' reliance upon the promises made to them by the Mayor and Defendant City's Personnel Department and their supervisors regarding this extra compensation they would receive upon retirement in exchange for staying employed with Defendant City for thirty (30) years was foreseeable by Defendant City.

58. Defendant City intended Plaintiffs rely on its promises in order to retain them as employees and pay them lesser salaries while they were employed with the promise of significant monetary savings during their retirements.

59. Plaintiffs have been injured as a result of their reliance on Defendant City's promises of free single coverage health insurance at retirement until the age of 65 or they became

Medicare eligible, a free Medicare supplemental health insurance policy when they became Medicare eligible, and the continuation of health care coverage for their spouse and/or dependents until their spouses and/or dependents became Medicare eligible.

60. Defendant City's failure to honor its promises to Plaintiffs is without substantial justification. Accordingly, Defendant City is estopped from now failing to provide Plaintiffs what it promised to them.

WHEREFORE, having fully stated their Complaint against Defendant City, Plaintiffs seek equitable relief in the form of actual and consequential damages; reinstatement of a free supplemental Medicare health insurance policy for Plaintiff Hood and premium reimbursement to him; a declaration by this Court that Defendant City is bound by its promises to Plaintiffs Rissanen and Baxley and must provide them a free supplemental Medicare health insurance policy when they become Medicare eligible and to permit their spouses to remain covered by Defendant City's health insurance; costs; attorney fees pursuant to S.C. Code §15-77-300 for Defendant City's wrongful actions; and for such other equitable relief as this Court deems appropriate.

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Attorneys for Plaintiff

Charleston, South Carolina

Date: 5-30-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Alvar R. Rissanen; Michael H. Baxley;)
Clifford W. Forner; and Willie L. Hood,)
Plaintiffs,)
)
vs.)
)
City Of North Charleston,)
Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-3210

**AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

FILED
JUL 13 2013
JUL 13 11:50 AM
CLERK OF COURT
BY

Plaintiffs, by and through their undersigned attorneys, complain against Defendant and allege as follows:

JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of Charleston County in the State of South Carolina. All Plaintiffs are retired City of North Charleston employees.
2. One (1) Plaintiff has already suffered, and three (3) Plaintiffs will imminently suffer, damages as a result of Defendant's actions.
3. The damages Plaintiffs have already, or will suffer, are real monetary damages, not abstract damages.
4. Plaintiffs' damages, as explained herein, are the direct result of Defendant's wrongful actions.
5. A decision by this Court in this case will resolve Plaintiffs claims.
6. There exists a justiciable controversy regarding the rights of the Plaintiffs pursuant to the terms of verbal promises made to them, and this determination is ripe for a decision and is not moot.

7. Defendant City of North Charleston ("Defendant City") is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina which owns property and does business in the County of Charleston in South Carolina.

8. All actions pertinent to the allegations in this Complaint took place in Charleston County.

9. Jurisdiction and venue is proper in this Court.

COMMON FACTS

10. Defendant City has a "strong mayor" form of government pursuant to S.C. Code §5-9-20 and R. Keith Summey is its Mayor.

11. In 1998, Mayor Summey told Defendant City's Finance Committee that he wanted to provide health insurance to persons retiring from Defendant City. He stated, "Our employees are our greatest asset and extending health insurance to those retiring from the City payroll will provide a very useable benefit."

12. Mayor Summey accordingly promised, and Defendant City agreed as follows: a) Defendant City would pay an increasing percentage of the cost of each retiree's single coverage health insurance premium based on the retiree's years of service until the retiree became Medicare eligible; b) when the retiree became Medicare eligible or was age 65, Defendant City promised to provide and pay the entire cost of a supplemental Medicare health insurance policy for that retiree; and c) for retirees who chose family coverage instead of single coverage when they retired, Defendant City promised that when the retiree became Medicare eligible, their spouses and/or dependents would still have health insurance with the City until they reached the age of 65 or became Medicare eligible, paid for by the retiree.

13. Specifically, Mayor Summey promised, and Defendant City agreed, that employees retiring with fifteen (15) years' service would have fifty percent (50%) of their single coverage health insurance premium paid by the City; employees retiring with twenty (20) years' service would have two thirds (66.6%) of their single coverage health insurance premium paid by the City; employees retiring with twenty-five (25) years' service would have eighty-three point two (83.2%) of their single coverage health insurance premium paid by the City; and employees retiring with thirty (30) years' service would have one hundred percent (100%) of their single coverage health insurance premium paid by the City.

14. Retirees who chose family coverage instead of single coverage when they retired were not penalized. Rather, Defendant City promised that as long as the retirees were alive they were eligible to obtain and pay the cost of health insurance through the City for their spouses and/or dependents until such time as their spouses and/or dependents became Medicare eligible. In other words, even if the retirees became Medicare eligible, they were promised that their spouses and/or dependents could pay for and obtain health insurance through the City until they reached the age of 65 or became Medicare eligible.

15. Mayor Summey's promises to Defendant City's retirees were fulfilled in full by Defendant City until June 30, 2010.

16. In May of 2009, Defendant City notified its retirees that starting June 30, 2010, "once a retiree becomes eligible for Medicare, all healthcare benefits provided by the City of North Charleston will cease."

17. Prior to June 30, 2010, the Defendant City, in fulfillment of its promises, had purchased a Medicare supplemental insurance policy for all retirees when they became eligible for Medicare and had also continued to allow the retirees to purchase family coverage for their

spouses and/or dependents who were not yet Medicare eligible so their spouses and/or dependents remained insured.

18. Plaintiffs Rissanen, Baxley and Hood retired from Defendant City in 2005. Plaintiff Forner retired in 2009.

19. On many occasions since 1998, and before then, these Plaintiffs were told by City personnel department representatives, in public statements by the Mayor, and in verbal and written communications by Defendant City personnel that they would receive from Defendant City free single coverage insurance if they retired after thirty (30) years of service (which they all did), a free supplemental Medicare health insurance policy when they turned 65 or became Medicare eligible, and continued insurance coverage for their spouses and/or dependents until their spouses/dependents became Medicare eligible.

20. Plaintiff Hood received free single coverage health insurance by Defendant City from the time he retired in 2005 until he reached age 65 in 2011. At age 65 when Plaintiff Hood became eligible for Medicare, Defendant City refused to purchase a supplemental Medicare health insurance policy for him as promised and Plaintiff Hood had to purchase a policy using his own funds.

21. Plaintiffs Rissanen and Baxley have been provided family coverage health insurance by Defendant City since the time they retired in 2005 until present. These Plaintiffs have their younger wives who are on their health insurance policies and Defendant City's health insurance is the only health insurance their wives have. When Plaintiffs Rissanen and Baxley reach age 65 in a few years, not only will Defendant City fail to provide them with a free supplemental Medicare insurance policy for themselves but their wives will suddenly be without any health insurance at all as they will be too young for Medicare.

22. Plaintiff Forner has been provided reduced cost single coverage health insurance by Defendant City since the time he retired until present. When Plaintiff Forner reaches age 65 in a few years, Defendant City has indicated it will not provide him with a free supplemental Medicare insurance policy.

23. Plaintiff Rissanen was Defendant City's Fire Chief for thirteen years. Chief Rissanen hosted annual meetings at which Mayor Summey and other Defendant City officials would appear each year and personally promise the assembled fire fighters they would receive free single coverage health insurance until they became Medicare eligible, then they would receive a free supplemental Medicare insurance policy, and their spouses and/or dependents would be able to remain on the City's insurance plan until they were Medicare eligible.

24. Specifically, Plaintiff Rissanen recalls hearing Mayor Summey telling the assembled fire fighters, "You've got it made"; "We've got you covered"; and "You have a honey of a deal" when he repeatedly explained what the City would provide its retirees.

25. Bob Connella, Defendant City's former Personnel Director, told Plaintiff Rissanen that Defendant City might not be able to afford to pay an increasing percentage of the cost of each retiree's single coverage health insurance premium based on the retiree's years of service until the retiree became Medicare eligible and pay the entire cost of a supplemental Medicare health insurance policy for retirees and allow retirees' spouses and/or dependents to remain on the City's health insurance policy until they reached the age of 65 "forever" but he assured him not to worry as all of the retirees would be "grandfathered."

26. Plaintiff Baxley who had been the Personnel Chief for the Fire Department was required as part of his job responsibilities to promise job applicants a free single coverage health insurance after thirty (30) years of service, a supplemental Medicare health insurance policy, and

continued health insurance coverage for retirees' spouses and/or dependents as part of their compensation packages. Plaintiff Baxley repeated these promises when he was recruiting employees and when he was trying to retain employees.

27. Plaintiffs Rissanen, Baxley and Hood continued to work for Defendant City for thirty (30) years, and Plaintiff Forner continued to work for Defendant City for 27 ½ years, in order to earn the promised free and/or reduced cost single coverage health insurance when they retired, free supplemental Medicare health insurance policy, and/or continued insurance coverage for their spouses and/or dependents as promised.

28. Plaintiffs made long term financial decisions for themselves and their families based on Defendant City's promises.

29. Plaintiff Forner would not have retired until he had worked a full 30 years, but he was angry that Defendant City announced in 2009 it was going to renege on its promises, so he quit his job. Had Plaintiff Forner remained employed, he would have had 100% of his health insurance paid for rather than only 87%.

30. Based on Defendant City's promises, Plaintiffs accepted lesser salaries while employed than their peers received in exchange for Defendant City's promises.

31. Plaintiffs could have left employment with Defendant City but the promises of free single coverage health insurance, a free Medicare supplemental health insurance policy, and the continuation of health care coverage for their spouse and/or dependents when they became Medicare eligible induced them to stay employed with Defendant City.

32. Based on Defendant City's verbal and written promises and representations, Plaintiffs had no reason to believe that the promises of free single coverage health insurance, a free Medicare supplemental health insurance policy, and the continuation of health care coverage

for their spouse and/or dependents when they became Medicare eligible would be subject to change after they retired.

FACTS AS TO EACH INDIVIDUAL PLAINTIFF

33. Plaintiff Rissanen retired from Defendant City in 2005 as Fire Chief with more than 30 years of service.

34. Plaintiff Rissanen has paid for and received family health insurance from Defendant City since his retirement.

35. Plaintiff Rissanen will turn sixty-five (65) in about three (3) years and at that time when he becomes Medicare eligible, he will have to start paying a significant amount of money out of his pocket for a supplemental Medicare health insurance policy and also for private health insurance for his wife as Defendant City has told Plaintiff Rissanen it will stop allowing his wife to be covered by Defendant City's insurance when he becomes Medicare eligible.

36. Plaintiff Rissanen has already investigated different types and costs of family coverage for his wife and he understands from several private insurance companies that because his wife has pre-existing health conditions, she is uninsurable and health insurance coverage for her will be so expensive that it will be unaffordable to him.

37. Plaintiff Rissanen's wife is nine (9) years younger than he is. She has been on Plaintiff Rissanen's family health insurance policy for many years. When Plaintiff Rissanen becomes Medicare eligible, as Defendant City has told Plaintiff Rissanen it intends to stop his insurance coverage completely, even though Plaintiff Rissanen will have Medicare coverage his wife will have no insurance coverage at all and it will be years before she will be eligible for Medicare.

38. The health insurance promised to Plaintiff Rissanen for his spouse and/or dependents years ago would have provided his wife continued health insurance coverage until she reached the age of 65. Had Plaintiff Rissanen known Defendant City was going to breach its promises to him, he or his wife could have taken steps to obtain alternate health insurance coverage years ago, but now it is too late.

39. Plaintiff Rissanen cannot wait until his wife loses health insurance coverage to ask this Court for a declaration of his rights.

40. Plaintiff Baxley retired from Defendant City in 2005 as Assistant Fire Chief with more than thirty (30) years of service.

41. Plaintiff Baxley has paid for and received family health insurance from Defendant City since 2005.

42. Plaintiff Baxley will turn sixty-five (65) in about three (3) years and at that time when he becomes Medicare eligible, he will have to start paying a significant amount of money out of his pocket for a supplemental Medicare health insurance policy and also for private health insurance for his wife as Defendant City has told Plaintiff Baxley it will stop allowing his wife to be covered by Defendant City's insurance when he becomes Medicare eligible.

43. Plaintiff Baxley has already investigated different types and costs of family coverage for his wife and he understands from several private insurance companies that because his wife has pre-existing health conditions, she is uninsurable and health insurance coverage for her will be so expensive that it will be unaffordable to him.

44. Plaintiff Baxley's wife is three (3) years younger than he is. She has been on Plaintiff Baxley's family health insurance policy for many years. When Plaintiff Baxley becomes Medicare eligible, as Defendant City has told Plaintiff Baxley it intends to stop his

insurance coverage completely, even though Plaintiff Baxley will have Medicare coverage his wife will have no insurance coverage at all and it will be three years before she will be eligible for Medicare.

45. The health insurance promised to Plaintiff Baxley for his spouse and/or dependents years ago would have provided his wife continued health insurance coverage until she reached the age of 65. Had Plaintiff Baxley known Defendant City was going to breach its promises to him, he or his wife could have taken steps to obtain alternate health insurance coverage years ago, but now it is too late.

46. Plaintiff Baxley cannot wait until his wife loses health insurance coverage to ask this Court for a declaration of his rights.

47. Plaintiff Forner retired from Defendant City in 2009 as a Battalion Chief with 27½ years of service. He bought 2 ½ more years of service due to his military service for state retirement purposes.

48. Plaintiff Forner started receiving free single coverage health insurance when he retired and he paid a reduced rate for it due to his years of service.

49. Plaintiff Forner will turn sixty-five (65) in about eleven (11) years and at that time when he becomes Medicare eligible, he will have to start paying a significant amount of money out of his pocket to pay for a supplemental Medicare health insurance policy, which he was promised would be free.

50. Plaintiff Hood retired from Defendant City in 2005 as Assistant Fire Chief with more than 30 years of service.

51. Plaintiff Hood started receiving free single coverage health insurance when he retired because his wife had health insurance through her job and he did not need family coverage.

52. Plaintiff Hood turned sixty-five (65) and became eligible for Medicare in January of 2011 at which time Defendant City refused to provide him a free supplemental Medicare health insurance policy as it had promised.

53. In early 2011, Plaintiff Hood had to purchase a supplemental Medicare health insurance policy that currently costs him over \$100 per month.

FIRST CAUSE OF ACTION
(PROMISSORY AND EQUITABLE ESTOPPEL)

54. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

55. At various times, Defendant City has made specific verbal and written representations and promises to Plaintiffs.

56. Plaintiffs relied on Defendant City's promises and continued to work for Defendant City when they might have obtained other job positions, in order to obtain free and reduced cost health insurance.

57. Plaintiffs' reliance was reasonable based on Defendant City's explicit promises and Defendant City's past conduct.

58. Defendant City's promises to Plaintiffs that their compensation included free single coverage health insurance when they retired, a free Medicare supplemental health insurance policy when they became Medicare eligible, and the continuation of health care coverage for their spouse and/or dependents until their spouse and/or dependents became Medicare eligible were clear and not ambiguous.

59. Plaintiffs had no way of knowing that Mayor Summey and Defendant City would break the promises that had been repeatedly made to them.

60. Plaintiffs reasonably relied upon Defendant City's promises not only because the promises were repeatedly made to them and their co-workers while they were employees, but because these promises were fulfilled for several years after Plaintiffs retired.

61. Under Defendant City's form of government, a Mayor's determination of how to compensate employees is lawful.

62. Plaintiffs' reliance upon the promises made to them by the Mayor and Defendant City's Personnel Department and their supervisors regarding this extra compensation they would receive upon retirement in exchange for staying employed with Defendant City for thirty (30) years was foreseeable by Defendant City.

63. Defendant City intended Plaintiffs rely on its promises in order to retain them as employees and pay them lesser salaries while they were employed with the promise of significant monetary savings during their retirements.

64. Plaintiffs have been injured as a result of their reliance on Defendant City's promises of free single coverage health insurance at retirement until the age of 65 or they became Medicare eligible, a free Medicare supplemental health insurance policy when they became Medicare eligible, and the continuation of health care coverage for their spouse and/or dependents until their spouses and/or dependents became Medicare eligible.

65. Defendant City's failure to honor its promises to Plaintiffs is without substantial justification. Accordingly, Defendant City is estopped from now failing to provide Plaintiffs what it promised to them.

WHEREFORE, having fully stated their Amended Complaint against Defendant City, Plaintiffs seek equitable relief in the form of actual and consequential damages; reinstatement of a free supplemental Medicare health insurance policy for Plaintiff Hood and premium reimbursement to him; a declaration by this Court that Defendant City is bound by its promises to Plaintiffs Rissanen and Baxley and must provide them a free supplemental Medicare health insurance policy when they become Medicare eligible and to permit their spouses to remain covered by Defendant City's health insurance; costs; attorney fees pursuant to S.C. Code §15-77-300 for Defendant City's wrongful actions; and for such other equitable relief as this Court deems appropriate.

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Charleston, South Carolina

Date: 6-28-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alvar R. Rissanen, Michael H.)
Baxley, Clifford W. Forner, and)
Willie L. Hood,)
)
Plaintiffs,)
)
vs.)
)
City of North Charleston,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-3210

ANSWER TO AMENDED COMPLAINT

FILED
2015 MAY 18 PM 2:40
CLERK OF COURT
J. ARMSTRONG

Defendant City of North Charleston ("City") responds to Plaintiffs' Amended Complaint as follows:

FOR A FIRST DEFENSE

- I The City moves to dismiss Plaintiffs' Amended Complaint pursuant to Rule 12(b)(6), SCRPC, because the Amended Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

- II A. Each allegation in the Amended Complaint not hereinafter expressly admitted is denied.
- B. The City responds to the allegations in the Amended Complaint by paragraph as follows:

JURISDICTION AND VENUE

1. Admitted that each Plaintiff is a retired City of North Charleston employee.

Defendant lacks sufficient information to form a belief as to the remaining allegations in Paragraph 1 of Plaintiffs' Amended Complaint and, therefore, denies all remaining allegations.

2. Denied.
3. Denied.
4. Denied.
5. Paragraph 5 contains allegations that constitute conclusions of law and, therefore, the City is not required to respond. To the extent a response is required, the City denies all the allegations in Paragraph 5 of Plaintiffs' Amended Complaint.
6. Paragraph 6 contains allegations that constitute conclusions of law and, therefore, the City is not required to respond. To the extent a response is required, the City denies all the allegations in Paragraph 6 of Plaintiffs' Amended Complaint.
7. Admitted.
8. The City lacks sufficient information to admit or deny the allegations contained in Paragraph 8 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.
9. Admitted.

COMMON FACTS

10. The City admits that its form of government is provided for in S.C. Code Ann. § 5-9-10 *et seq.* The City further admits that R. Keith Summey is its Mayor. The City denies all remaining allegations in Paragraph 10 of Plaintiffs' Amended Complaint.
11. Admitted that the City's Mayor submitted a memorandum to the City Council

Finance Committee. The City defers to the memorandum for its specific content and statements, and denies the allegations in Paragraph 11 of Plaintiffs' Amended Complaint to the extent the allegations are inconsistent with the memorandum. The City denies any remaining allegations in Paragraph 11 of Plaintiffs' Amended Complaint.

12. Denied.

13. Denied.

14. Denied.

15. The City admits that as of July 1, 2010, upon Plaintiffs becoming eligible for Medicare, all healthcare benefits provided by or through the City cease, including healthcare benefits for dependents of retirees. The City denies the remaining allegations in Paragraph 15 of Plaintiffs' Amended Complaint.

16. The City admits that in May 2009 it provided a letter to all City retirees. The City defers to the letter for its specific content and statements, and denies the allegations in Paragraph 16 of Plaintiffs' Amended Complaint to the extent the allegations are inconsistent with the May 2009 letter. The City denies the remaining allegations in Paragraph 16 of Plaintiffs' Amended Complaint.

17. The City admits that from in or about May 1984 to in or about July 2010, the City provided healthcare benefits and/or access to healthcare benefits for retirees pursuant to City ordinances and related executive orders. The City defers to the applicable ordinances and executive orders, including any approved amendments to either, for their specific content, terms and conditions, and the City denies the allegations in

Paragraph 17 of Plaintiffs' Amended Complaint to the extent the allegations are inconsistent with or contrary to City ordinances and executive orders. The City denies any remaining allegations in Paragraph 17 of Plaintiffs' Amended Complaint.

18. Admitted.

19. Denied.

20. The City admits that Plaintiff Hood elected to receive, and did receive, retiree health benefits beginning at the time of his retirement in 2005 and continuing until he turned 65 years of age in 2011. The City further admits that Plaintiff Hood's eligibility for retiree health benefits by and/or through the City ended when Plaintiff Hood turned 65 years of age and he became eligible for Medicare. Additionally, the City admits that it did not provide Plaintiff Hood, or otherwise purchase for him, a supplemental Medicare insurance policy when he turned 65 years of age. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 20 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

21. Admitted that Plaintiffs Rissanen and Baxley requested and received health insurance coverage through the City for each of them and their spouses from their respective retirements in or about 2005 to the present. The City further admits when Plaintiffs Rissanen and Baxley turn 65 years of age and they become eligible for Medicare, neither of them nor their spouses will be eligible for continued healthcare benefits through or by the City. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 21 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

22. Admitted that Plaintiff Forner requested and received reduced cost health insurance coverage through the City from his retirement in or about 2009 to the present. The City further admits when Plaintiff Forner turns 65 years of age and he becomes eligible for Medicare, he will not be eligible for continued healthcare benefits through or by the City. The City denies the remaining allegations contained in Paragraph 22 of Plaintiffs' Amended Complaint.
23. Admitted that Rissanen was the City's Fire Chief for, approximately, 13 years. The City denies all remaining allegations in Paragraph 23 of Plaintiffs' Amended Complaint.
24. The City lacks sufficient information to admit or deny the allegations contained in Paragraph 24 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.
25. The City lacks sufficient information to admit or deny the allegations contained in Paragraph 25 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Admitted that Plaintiffs' were at-will employees who could have ended their employment with the City at anytime. The City denies the remaining allegations

contained in Paragraph 31 of Plaintiffs' Amended Complaint.

32. Denied.

FACTS AS TO EACH INDIVIDUAL PLAINTIFF

33. Admitted.

34. Admitted.

35. Admitted, upon information and belief, that Plaintiff Rissanen will turn 65 years of age on March 14, 2016. The City further admits that it notified Plaintiff Rissanen of changes to the City's retiree health benefits in May 2009 and the City defers to the May 2009 letter for its specific content and statements, and denies the allegations in Paragraph 35 of Plaintiffs' Amended Complaint to the extent the allegations in it are inconsistent with the City's May 2009 letter. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 35 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

36. The City lacks sufficient information to admit or deny the allegations contained in Paragraph 36 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

37. The City admits that it notified Plaintiff Rissanen of changes to the City's retiree health benefits in May 2009 and the City defers to the May 2009 letter for its specific content and statements, and denies the allegations in Paragraph 37 of Plaintiffs' Amended Complaint to the extent the allegations in it are inconsistent with the City's May 2009 letter. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 37 of Plaintiffs' Amended Complaint

and, therefore, denies those allegations.

38. Denied.

39. Paragraph 39 contains allegations that constitute conclusions of law and, therefore, the City is not required to respond. To the extent a response is required, the City denies all the allegations in Paragraph 39 of Plaintiffs' Amended Complaint.

40. Admitted.

41. Admitted.

42. Admitted, upon information and belief, that Plaintiff Baxley will turn 65 years of age on June 12, 2016. The City further admits that it notified Plaintiff Baxley of changes to the City's retiree health benefits in May 2009 and the City defers to the May 2009 letter for its specific content and statements, and denies the allegations in Paragraph 42 of Plaintiffs' Amended Complaint to the extent the allegations in it are inconsistent with the City's May 2009 letter. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 42 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

43. The City lacks sufficient information to admit or deny the allegations contained in Paragraph 43 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

44. The City admits that it notified Plaintiff Baxley of changes to the City's retiree health benefits in May 2009 and the City defers to the May 2009 letter for its specific content and statements, and denies the allegations in Paragraph 44 of Plaintiffs' Amended Complaint to the extent the allegations in it are inconsistent with the City's

May 2009 letter. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 44 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

45. Denied.

46. Paragraph 46 contains allegations that constitute conclusions of law and, therefore, the City is not required to respond. To the extent a response is required, the City denies all the allegations in Paragraph 46 of Plaintiffs' Amended Complaint.

47. The City admits that Plaintiff Forner retired in June 2009, after working approximately 27 ½ years for the City. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 47 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

48. Admitted.

49. Admitted, upon information and belief, that Plaintiff Forner will turn 65 years of age on February 10, 2024. The City further admits that it notified Plaintiff Forner of changes to the City's retiree health benefits in May 2009 and the City defers to the May 2009 letter for its specific content and statements, and denies the allegations in Paragraph 49 of Plaintiffs' Amended Complaint to the extent the allegations in it are inconsistent with the City's May 2009 letter. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 49 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

50. Admitted.

51. The City admits Defendant Hood began receiving personal health insurance

coverage, at no direct cost to him, when he retired in 2005. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 51 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

52. Admitted, upon information and belief, that Plaintiff Hood turned 65 years of age on January 9, 2011. The City further admits that it notified Plaintiff Hood of changes to the City's retiree health benefits by letter in May 2009 and the City defers to the May 2009 letter for its specific content and statements, and denies the allegations in Paragraph 52 of Plaintiffs' Amended Complaint to the extent the allegations in it are inconsistent with the City's May 2009 letter. The City lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 52 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

53. The City lacks sufficient information to admit or deny the allegations contained in Paragraph 53 of Plaintiffs' Amended Complaint and, therefore, denies those allegations.

FIRST CAUSE OF ACTION
(PROMISSORY AND EQUITABLE ESTOPPEL)

54. The City incorporates its responses to Paragraphs 1 through 53 above as fully and completely as if set forth verbatim herein.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

- 59. Denied.
- 60. Denied.
- 61. Paragraph 61 contains allegations that constitute conclusions of law and, therefore, the City is not required to respond. To the extent a response is required, the City denies all the allegations in Paragraph 61 of Plaintiffs' Amended Complaint.
- 62. Denied.
- 63. Denied.
- 64. Denied.
- 65. Denied.

FOR A THIRD DEFENSE

- III. The City pleads the provisions of the South Carolina Tort Claims Act ("Act"), S.C. Code §§ 15-78-10, *et seq.*, including all of the immunities, limitations and defenses granted or preserved in the Act.

FOR A FOURTH DEFENSE

- IV. The City's actions, without admitting same to be true, constitute the exercise of discretion or judgment for which the City, a governmental entity, is not liable.

FOR A FIFTH DEFENSE

- V. Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

FOR A SIXTH DEFENSE

- VI. Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

FOR A SEVENTH DEFENSE

- VII. Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE

- VIII Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

FOR A NINTH DEFENSE

- IX Plaintiffs' claims are barred in whole or in part by the applicable statute(s) of limitation.

FOR A TENTH DEFENSE

- X Plaintiff's claims for promissory estoppel are barred because even if the City made a promise(s) to Plaintiffs (an allegation the City denies), Plaintiffs' reliance on that promise was not reasonable.

FOR AN ELEVENTH DEFENSE

- XI Plaintiffs' claims for promissory estoppel are barred because even if the City made a promise(s) to Plaintiffs (an allegation the City denies), Plaintiffs' reliance on that promise was not foreseeable.

FOR AN TWELFTH DEFENSE

- XII Plaintiffs' claims for promissory estoppel are barred because even if the City made a promise(s) to Plaintiffs (an allegation the City denies), Plaintiffs suffered no injury in reliance on that promise.

FOR A THIRTEENTH DEFENSE

- XIII Plaintiffs' claims are barred because the City committed no act or omission with the intent to harm, injure, or damage Plaintiffs.

FOR A FOURTEENTH DEFENSE

- XIV Plaintiffs' claims are barred in whole or in part because the City's actions were justified by legitimate business reasons and existing law.

FOR A FIFTEENTH DEFENSE

- XV Plaintiffs have failed to mitigate their damages, and their claims are thus precluded or limited under the doctrine of avoidable consequences.

FOR A SIXTEENTH DEFENSE

- XVI Plaintiffs' claims are barred in whole or in part because the City's actions were not in willful disregard of any legal rights of Plaintiffs.

FOR A SEVENTEENTH DEFENSE

- XVII Plaintiffs' claims are barred in whole or in part because the City's actions were not taken with malice or bad faith.

FOR AN EIGHTEENTH DEFENSE

- XVIII Plaintiffs' claims are barred in whole or in part because, as a matter of law, neither the City nor the City's employees can create an enforceable contract between the City and its retirees.

FOR A NINETEENTH DEFENSE

- XIX Plaintiffs' claims are barred in whole or in part because, as a matter of law, one City Council cannot bind a successor City Council.

FOR A TWENTIETH DEFENSE

- XX Plaintiffs' claims are barred in whole or in part because, as a matter of law, the promises alleged by Plaintiffs are void.

FOR A TWENTY-FIRST DEFENSE

- XXI Plaintiffs' claims for actual and consequential damages are barred.

FOR A TWENTY-SECOND DEFENSE

- XXII Plaintiffs' claims for attorneys' fees are barred.

FOR A TWENTY-THIRD DEFENSE

XXIII Plaintiffs' claims are equitable claims and, therefore, Plaintiffs are not entitled to a jury trial.

FOR A TWENTY-FOURTH DEFENSE

XXIV Plaintiffs Rissanen and Baxley lack capacity to bring suit against the City on behalf of, or in a representative capacity, the claims of their spouses for health insurance coverage for those spouses, to the extent Plaintiffs Rissanen and Baxley make such claims in the Amended Complaint or otherwise seek a remedy on behalf of their spouses.

FOR A TWENTY-FIFTH DEFENSE

XXV Plaintiffs claims are not ripe for review and Plaintiffs claims are for prospective, speculative relief.

FOR A TWENTY-SIXTH DEFENSE

XXVI To the extent the City made promises, whether written or verbal, to Plaintiffs regarding retiree health insurance coverage, which the City denies, the City has not failed to comply with any such promise.

FOR A TWENTY-SEVENTH DEFENSE

XXVII Plaintiffs claims are barred by the statute of frauds.

FOR A TWENTY-EIGHTH DEFENSE

XXVIII Plaintiffs Rissanen and Baxley are not the real parties in interest, pursuant to Rule 17(a), SCRCP, to the extent the Amended Complaint requests remedies for their spouses.

FOR A TWENTY-NINTH DEFENSE

XXIX Plaintiffs Rissanen and Baxley fail to join all persons (i.e., their spouses) needed for a just

adjudication of the claims, pursuant to Rule 19, SCRPC.

FOR A THIRTIETH DEFENSE

XXX Plaintiffs' request for declaratory relief is barred as Plaintiffs' do not, and cannot, pursue a claim pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 15-53-10 *et seq.*

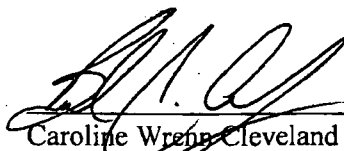
FOR A THIRTY-FIRST DEFENSE

XXXI Plaintiffs' relief as to their claim for promissory estoppel is limited to restitution and reliance damages only.

FOR A THIRTY-SECOND DEFENSE

XXXII To the extent Plaintiffs Rissanen and Baxley assert claims regarding health insurance coverage for their dependents in the Amended Complaint, or otherwise seek a remedy on behalf of their dependents, the claims are barred as the dependents cannot prove they relied on alleged representations made by the City or otherwise suffered any compensable injury as a result of the any alleged reliance.

WHEREFORE, having fully answered the Plaintiffs' Amended Complaint, the City requests that this action be dismissed and that the City be awarded its costs and fees.



Caroline Wrenn Cleveland (SC Bar #64253)

Bob J. Conley (SC Bar #12243)

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ATTORNEYS FOR DEFENDANT
CITY OF NORTH CHARLESTON

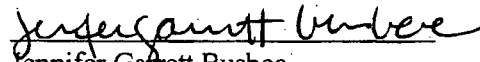
Charleston, South Carolina

May 14, 2015

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of Defendant City of North Charleston's Answer to Plaintiffs' Amended Complaint on counsel for Plaintiff by depositing same in the United States Mail, First Class postage prepaid, and addressed to:

Nancy Bloodgood, Esquire
Foster Law Firm, LLC
895 Island Park Drive, Suite 202
Daniel Island, South Carolina 29492


Jennifer Garrett Busbee

This 14th day of May, 2015.

FILED
2015 MAY 18 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge J. C. Nicholson, Jr.

Case No. 2013-CP-10-3210

Alvar R. Rissanen, Michael H. Baxley,
Clifford W. Forner, and Willie L. Hood,

Respondents,

v.

City of North Charleston,

Appellant.

NOTICE OF APPEAL

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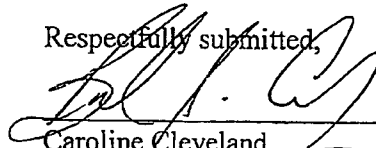
FILED
2019 FEB 27 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Appellant City of North Charleston hereby appeals the Order of the Honorable J. C. Nicholson, Jr., attached as Exhibit A, dated November 9, 2018, and filed with the Charleston County Clerk of Court on November 13, 2018. Appellant received written notice of the entry of final judgment in the case on November 16, 2018, and, thereafter, served and filed a Motion to Alter or Amend on November 26, 2018.

The Honorable J. C. Nicholson, Jr. issued an Order, attached as Exhibit B, dated January 31, 2019, and filed with the Charleston County Clerk of Court on February 5, 2019, denying Appellant's Motion to Alter or Amend. Appellant received written notice of the Order denying its Motion to Alter or Amend on February 6, 2019.

Respectfully submitted,



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Attorneys for Appellant

Charleston, South Carolina

Date: 2/26/19

Other Counsel of Record:

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Attorney for Respondent

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge J. C. Nicholson, Jr.

Case No. 2013-CP-10-3210.

Alvar R. Rissanen, Michael H. Baxley,
Clifford W. Forner, and Willie L. Hood,

Respondents,

v.

City of North Charleston,

Appellant.

PROOF OF SERVICE OF NOTICE OF APPEAL

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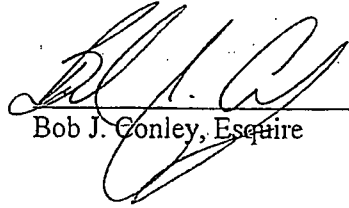
Attorneys for Appellant

FILED
2019 FEB 27 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT

I hereby certify that on February 26, 2019, I served a copy of the Notice of Appeal
on the following:

Nancy Bloodgood
Lucy Sanders
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464

by placing a copy of said document in the United States mail with sufficient postage thereon.



Bob J. Conley, Esquire

Charleston, South Carolina

Date: February 26, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP- 10-3210

Alvar R. Rissanen; Michael H. Baxley; Clifford W. Forner; and
Willie L. Hood

City of North Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

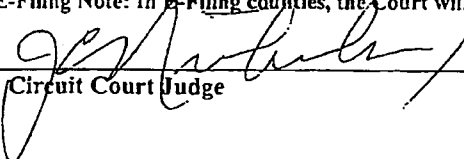
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiffs	City of North Charleston	\$214,236.15
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

11/9/18
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alvar R. Rissanen; Michael H. Baxley;
Clifford W. Forner; and Willie L. Hood,

Plaintiffs,

vs.

City of North Charleston,

Defendant.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) Case No.: 2013-CP-10-3210

ORDER

2018 NOV 13 PM 2:03

FILED

This matter came before me as a bench trial on October 18 and 19, 2017. There is one cause of action in Plaintiffs' Amended Complaint, promissory estoppel. Based on the pleadings, the witnesses' testimony, the exhibits, the trial briefs, and post trial memoranda submitted by counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The four (4) Plaintiffs are retired fire fighters who were all employed with Defendant City of North Charleston at the time of their retirement.
2. Plaintiff Rissanen worked for the City of North Charleston for 35 years. He retired on September 30, 2005. At the time of his retirement, he was the Fire Chief and he had held that position for 13 years.
3. Plaintiff Baxley worked for the City of North Charleston for 34 years. He retired on June 30, 2005. At the time of his retirement, he was the Personnel Chief and he had held that position for 7-8 years.
4. Plaintiff Hood worked for the City of North Charleston for 33 years. He retired in 2005. At the time of his retirement, he was an Assistant Fire Chief.

5. Plaintiff Forner worked for the City of North Charleston for 27½ years. He retired in June of 2009 shortly after receiving a letter from Mayor Summey indicating that employees who retired after July 1, 2009, would be treated differently than those who had retired before July 1, 2009. At the time of his retirement, Plaintiff Forner was a Battalion Chief. Plaintiff Forner had to purchase 2 ½ years of retirement to be able to retire in 2009, at a cost to him of \$20,000.

6. Three (3) of the Plaintiffs are currently paying between \$130.00 and \$140.00 every month to purchase a Medicare Supplement Policy (or about \$1,680.00 annually.) The Plaintiffs testified that the cost of a Medicare Supplement Policy increases each year. Plaintiff Forner testified he estimates that when he turns age 65, the cost to purchase a Medicare Supplement Policy will likely be greater than \$140 per month.

7. The City of North Charleston has a "strong mayor" form of government pursuant to S.C. Code Ann. §5-9-20. R. Keith Summey is the Mayor of North Charleston.

8. Pursuant to S.C. Code Ann. § 5-7-272, municipal ordinances that have been approved by City Council in two (2) readings have the force of law.

9. All municipal ordinances must be codified per S.C. Code Ann. § 5-7-290.

10. North Charleston first codified its municipal ordinances in 1986. (Ord. 1986-29.)

11. North Charleston Ordinance No. 1984-23 is included in the City's codification.

12. North Charleston Ordinance No. 1984-23 states, in pertinent part, "Be it ordained by the Mayor and City Council of the City of North Charleston . . . : Upon retirement from the City, employees who meet the requirements listed below have the option to retain health, life, and dental insurance under the City's group plan by paying the applicable rate budgeted for full time active employees . . . : Police/Fire: age 55 or 30 years

covered service, or early retirement age 50 or 25 years covered service." The ordinance goes on to state that "Coverage will terminate upon failure of the retiree to make the required advance payment, upon termination of the City's group plan, or when determined to be in the best interest of the City."

13. North Charleston City Council has never repealed Ord. No. 1984-23.

14. The manner to amend City ordinances is stated in the North Charleston City Code (North Charleston City Code, Section 1-5) and North Charleston City Council has never amended Ord. No. 1984-23.

15. In May of 1998, while Plaintiffs were still employed and shortly after Mayor Keith Summey assumed the position of Mayor, Mayor Keith Summey wrote a memo to the Finance Committee of Council where he delineated his plan to provide retirees with free retiree health insurance

16. Whereas Ord. 1984-23 merely stated that after working a certain number of years; retirees could remain on the City's health insurance plan paying the same amount fulltime employees paid, Mayor Summey's Memo acknowledged the fact that Medicare would become available to retirees at age 65, and that when retirees turned 65 and went on Medicare, the City would pay the cost of a Medicare Supplement Policy for them so their health insurance would continue to be free.

17. In this 1998 Memo, Mayor Summey also acknowledged that if retirees had family plans their dependents would also be covered until they were Medicare eligible.

18. Specifically, in this 1998 Memo, Mayor Summey stated retirees would receive: 1) free single coverage health insurance when they retired if they had worked for the City for 30 years (or a smaller percentage paid if they retired with less than 30 years' service); 2) a free Medicare supplemental health insurance policy when they became eligible for Medicare at age

65; and 3) the continuation of health care coverage for their spouse and/or dependents on a City health insurance policy until their spouse and/or dependents became Medicare eligible.

19. Defendant's Finance and Human Resources employees were authorized to provide information to employees regarding retiree health insurance and they confirmed and explained to employees the Mayor's promise when asked about it after 1998.

20. Defendant operates under a Mayor-Council form of government in which the Mayor is the Chief Administrator of the City.

21. As Chief Administrator, the Mayor is responsible for appointing all employees and directing and supervising the administration of all departments. (S.C. Code § 5-9-30.)

22. As Chief Administrator, the Mayor has the responsibility of appointing all employees and directing and supervising the administration of all departments, including establishing personnel policies. (North Charleston Code of Ordinances Sections 2-96, 2-176.)

23. The Mayor can draw on City funds with the Finance Director's approval. (*Id.* at Section 2-86)

24. City Council cannot repeal by ordinance obligations assumed by the City fixing the salaries of employees of the City. (*Id.* at Section 2-113.)

25. The City implemented the Mayor's 1998 interpretation of Ordinance 1984-23 from 1998 until 2009.

26. Plaintiffs testified they trusted HR Director Bob Cannella and Mayor Summey when they made promises about free health insurance for retirees because Bob Cannella and Mayor Summey had authority as Mayor and Finance Department Head to make those promises. Additionally, they testified (and the Mayor agreed) that the Mayor had made the promises repeatedly through the years at staff meetings and luncheons and at different fire stations to hundreds of employees. Plaintiffs testified they knew they could count on the Mayor because he

had never broken a promise to them and was a man of his word. It is undisputed that the Mayor confirmed the promises made in his 1998 Memo verbally on many occasions.

27. Defendant's Mayor used the promise of free retiree health insurance as a recruiting tool to keep firefighters, including Plaintiffs, employed by the City. Plaintiffs testified when firefighters would complain about low wages or consider leaving the City, Defendant's Mayor would point to the promise of free retiree health insurance and boast to the employees, "You've got a honey of a deal."

28. Plaintiff Rissanen, a former Fire Chief for Defendant, testified that the City's Fire Department personnel were paid less than other municipalities, that the promise of the City paying the cost of retiree health insurance was an inducement for fire personnel to remain employed by the City, and the promise of free retiree health insurance for life reduced turnover.

29. When three (3) of the Plaintiffs (Rissanen, Baxley and Hood) retired in 2005, they began obtaining what they were promised. Specifically, they remained on the City's health plan with the City paying the cost of their single coverage health insurance. None of these Plaintiffs were Medicare eligible at the time they retired.

30. In 2009, accounting practices changed for political entities, and cities and counties were required to begin accounting for their contingent liabilities in the same manner as private businesses. This meant that for the first time the City had to set aside funds that were sufficient to meet their future financial obligations to its retirees.

31. Mayor Summey sent Plaintiffs and other employees a letter in 2009 indicating the City would continue to pay all of or a percentage of the cost of retiree health insurance until age 65, but for employees retiring after June 30, 2009, all healthcare benefits would cease once an employee became eligible for Medicare.

32. In effect, the City was reneging on two (2) of the three (3) parts of its promise: it would continue to provide free health insurance to retirees until age 65 when they became eligible for Medicare, but it would no longer pay the cost of a Medicare supplement which meant retiree health care would no longer be free after the age of 65. Additionally, the City would no longer allow retirees' spouses to be covered by the City's self-insured health insurance program once a retiree turned 65. However, this promise was never conveyed directly to the retirees' dependents and the City never shared costs for eligible dependents of retirees to participate in the plan.

33. Between 2009 and 2011, the Mayor met with Plaintiffs Rissanen and Baxley and Plaintiffs Rissanen and Baxley were assured by the Mayor, City Council members, and HR personnel that they would be not treated differently as they had already retired so they were grandfathered in. Plaintiffs Rissanen and Baxley relayed this information to the other Plaintiffs and retirees.

34. The former HR Director, Bob Canella, repeatedly assured Plaintiff Rissanen he would be grandfathered.

35. City Councilmembers Rhonda Jerome and Bob King assured Plaintiff Baxley he would be grandfathered.

36. Nevertheless, at some time after 2011, Plaintiffs realized that these representations were probably not true and that the City intended to break its promise to them. In fact, the City stopped paying the cost of Plaintiffs' Medicare supplement when Plaintiffs Rissanen, Baxley and Hood reached age 65 and the City has refused to provide health insurance for Plaintiffs Rissanen's and Baxley's wives.

37. The Plaintiffs filed this lawsuit on May 31, 2013. The City contends that their claims are barred by the three year statute of limitations because it began to run in 2009 when

Plaintiffs received the letter from the City stating all healthcare benefits will cease once a retiree becomes Medicare eligible. Absent the City's continued promises that the Plaintiffs would be grandfathered into the former retirement system, the statute would in fact begin to run on the date of the City's letter. However, as stated more fully below, the City's actions bars them from asserting the statute of limitations as a defense.

38. Plaintiffs Rissanen's and Baxley's wives are currently on COBRA which will end shortly for Plaintiff Baxley's wife, and in a year or so for Plaintiff Rissanen's wife.

39. The City's Finance Director Warren Newton testified the City's annual budget is about \$120 million dollars. Of that amount, Mr. Newton testified about 6.5 million dollars is spent on health care for all of its 1100 employees, or about 6.5% of its budget. In 2009, there were only about 67 retired employees receiving free health insurance.

40. The cost to the City of paying for these four (4) Plaintiffs' Medicare Supplement Policies and/or their and their dependents' insurance until age 65 is an extremely small percentage of the City's budget.

CONCLUSIONS OF LAW

1. "[A]n estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice." *Higgins Constr. Co. v. S. Bell. Tel. & Tel. Co.*, 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981).

2. "The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the

promise is made must sustain injury in reliance on the promise.” *Bishop v. City of Columbia*, 401 S.C. 651, 664 (Ct. App. 2013) citing *Woods v. State*, 314 S.C. 501, 505 (Ct. App. 1993).

3. Promissory estoppel is used where the refusal to apply it would sanction the perpetration of a fraud or would result in other injustice. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (quoting *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). South Carolina courts recognize a remedy in equity in a promissory estoppel claim. *Satcher v. Satcher*, 351 S.C. 477, 483-484, 570 S.E.2d 535, 538 (Ct. App. 2002); *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). The principle that equity “regards as done that which ought to be done” applies in cases where the party seeking equitable relief establishes “a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.” *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011) (citing *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, “courts look to the substance and intent of the parties, and give a construction consistent with such intent.” *Regions Bank*, 394 S.C. at 253-254, 715 S.E.2d at 354-355 (quoting *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480 (1842)). Once a party establishes an equitable right, the court may dispense with formalities that would defeat the equity. *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. Where a substantive right

exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004).

4. The promise of free retiree health insurance was not ambiguous. The fact that the City complied with its promise for several years is direct evidence that the promise was unambiguous and capable of being fulfilled. In fact, Defendant City is still complying with part of its promise, paying the cost of single coverage retiree health insurance until the retirees reach age 65. Defendant cannot contend that the promise is so ambiguous that it cannot be fulfilled when it continues to keep part of the promise and was very clear on what part of the promise it was not going to keep per the Mayor's 2009 letter. In fact, Mayor Summey acknowledged that a promise had been made and he testified would have continued doing what had promised if he could have financially, which indicates the promise was clear enough that all parties understood its terms and clear enough that it could easily be fulfilled if the City so chose.

5. Upon consideration of the totality of the circumstances, this Court concludes that the Plaintiffs' reliance on the promise of free retiree health insurance for life was reasonable despite the discretionary language contained with Ord. No. 1984-23 stating "[c]overage will terminate . . . when determined to be in the best interest of the City." *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337-38 (Ct. App. 2000) ("A determination of justifiable reliance involves the evaluation of the totality of the circumstances, including the positions and relations of the parties."). A party's reliance on a representation is not unreasonable, unexpected, or unforeseeable as a matter of law when testimony indicates that the representations were "not uncommon" within the setting in which they were made. See *Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). Here, there was ample evidence that the Plaintiffs' reliance was reasonable because of the circumstances surrounding the promise, the

context in which the promise was made and repeated, and the position of the parties making the promise.

6. The final element of promissory estoppel requires demonstrating that the reasonably relying promisee sustains injury due to a disposition inconsistent with alleged promise. *Craft v. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In *Craft*, promissory estoppel was found not to exist as the plaintiff's unemployed status was due to an external factor. Similarly, *Barnes v. Johnson*, 402 S.C. 458, 475, 742 S.E.2d 6, 15 (Ct. App. 2013), is distinguished from the facts in this case as in *Barnes* case, an external factor (a fire) destroyed the property at issue. These cases are distinguishable from the case at hand because, here, each of the Plaintiffs has suffered injuries resulting directly from Defendant's actions. Specifically, Plaintiffs have paid more and are paying more for health insurance than they would have because Defendant did not keep its promise.

7. In reliance on Defendant's promises, Plaintiffs accepted lower wages; turned down job offers or did not seek other employment, retired earlier than they would have, and did not fully pursue jobs with higher earning potential.

8. Defendant contends that a promise for future benefits is an unenforceable violation of public policy. This Court disagrees. The future benefits the Plaintiffs were continuously promised was the basis for their reasonable reliance. To say that a promise for future benefits is a violation of public policy would effectively void the doctrine of promissory estoppel.

9. The facts in this case are similar to the facts in a case involving retired firefighters in Columbia, S.C. where the Court of Appeals reversed summary judgment finding there was a scintilla of evidence to support a claim for promissory estoppel and remanded the case for trial. (*Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)).

10. In *Bishop*, a similar argument was made by Defendant City of Columbia as by Defendant in this case. Specifically, the City of Columbia, citing the case of *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996), argued that the decision to provide free retiree health insurance based on the number of years worked is a legislative, not a business decision and that one legislative body cannot bind a future legislative body. However, that particular argument is not relevant here as the Court of Appeals only considered this argument as it related to a governmental entity's *contractual* obligations and Plaintiffs have not brought a contract claim in this case as the plaintiffs did in *Bishop*; here, Plaintiffs have only alleged a promissory estoppel claim.

11. In *Bishop*, the Court of Appeals did not decide this particular issue as it dismissed the contract cause of action on other grounds.

The City also argues, and Retirees dispute, that summary judgment on the contract claims was appropriate because: (1) Retirees were "at-will" employees; (2) contracts for continuing free health insurance would violate public policy; and (3) Retirees could not have a permanent right to free lifetime health insurance under *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996). Because we affirm the grant of summary judgment against the contract claims on other grounds, we need not address these arguments.

Bishop supra, 401 S.C. 651, 663, 738 S.E.2d 255, 261.

12. Additionally, Defendant City operates under a Mayor-Council (strong Mayor) form of government in which the Mayor is the Chief Administrator of the City. Our Supreme Court held in *Townes Associates, Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976) that a city's chief administrator has the authority to enter into contracts on behalf of the city to further its policies. Here, the policy of the City to provide free retiree health insurance is reflected in Ord. 1984-23. Therefore, the Mayor did not act outside the scope of his employment by making representations to City employees regarding payment of the cost of retiree health insurance by

the City as that is the type of representation for which he is responsible for as Chief Administrator.

13. The promise in this case involved payment of money, or additional wages, and a promise of wages in the future can be part of an employee's salary. The South Carolina Payment of Wages Act defines wages as "*all amounts at which labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee *under any employer policy or employment contract.*" S.C. Code § 41-10-10 (emphasis added). The future wages promised to Plaintiffs are compensation for work which had already been performed by them. Plaintiffs worked for the City for the requisite number of years to obtain insurance that would cost them nothing (or almost nothing in Plaintiff Fomer's case) and, thus, the promise had significant value which is an easily ascertainable monetary amount. Further, in *Bishop*, the Court of Appeals referred to the promise of retiree health insurance as a promise for "free" insurance, indicating its agreement that the promise involved the money value of the insurance and not just a future benefit.

Retirees also testified that several supervisors informed them they would receive *free* health insurance for life during their individual merit interviews and evaluations, which were incidental to the supervision of their employment. Therefore, the employment review context during which the representations were made provides a scintilla of evidence to suggest the representations and promises were within the supervisors' authority and reasonably relied upon.

Bishop v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013) (emphasis added).

The Court of Appeals considered and ruled that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now—that its claim for benefits rather than a claim for money. By allowing the *Bishop* case to go forward, the Court of

Appeals rejected Defendant's argument that the promise was unenforceable because it was a promise for future benefits.

14. The City's mere failure to enforce an ordinance by failing to fund it does not amend or repeal the ordinance. The enforcement of an ordinance is discretionary. North Charleston's failure to enforce Ord. No. 1984-23 by not funding it does not amend or repeal that Ordinance. In this case, the 1984 Ordinance is evidence of Defendant's policy of paying the cost of retiree health insurance which was reflected in the Mayor's actions and promises in 1998 and subsequently through the years.

15. Defendant argues the Tort Claims Act (S.C. Code § 15-78-60 (4)) absolves Defendant of liability. However, Plaintiffs' only cause of action is a promissory estoppel claim which is a quasi-contract claim, so the Tort Claims Act is not relevant to this case. *See, North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

16. Plaintiffs' claims are not barred by the statute of limitations. Plaintiffs had many discussions with Defendant's Mayor and HR personnel after receiving the Mayor's letter in May of 2009. For at least two years after May of 2009, Defendant continued to represent that Plaintiffs would be "grandfathered." The Mayor's May 2009 letter stated that proposed changes would go into effect in June 2010 inferring that employees retiring before June 1, 2009 would be treated differently than employees retiring after June 1, 2009. A memorandum authored by Mayor Summey confirmed that grandfathering was being discussed. Plaintiffs were not on notice that Defendant had decided not to grandfather them until after 2011. In fact, Plaintiffs testified they believed the Mayor was an outstanding mayor who could make things happen, and was a man of his word. As late as 2011, Mayor Summey told Plaintiffs he wanted to keep the promise and would try to find a way to do so and was directing City employees to find a way to help Plaintiffs.

17. “[A] defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant’s conduct.” *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007) (quoting *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997)). Here, the Mayor and the City’s HR and administrative personnel continued over the course of many months after the Mayor’s 2009 letter to assure Plaintiffs verbally and in writing that they would be grandfathered; the City even arranged for Plaintiffs to meet with an insurance company. The City’s conduct was intended to, and did, induce the Plaintiffs to hold off filing a lawsuit as they believed that the promises made to them would be kept.

18. Plaintiffs are entitled to an equitable remedy. In *Dockins v. Ingles Mkts.*, 306 S.C. 496, 497, 413 S.E.2d 18, 18-19 (1992), the Court held equitable relief included employment, reinstatement, and promotion; the idea being to put the employee back in the position he would have been. “[A] plaintiff could seek restitution in equity, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession . . . for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession.” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213-214 (2002). Contrary to Defendant’s argument, reliance damages can be money damages.

19. Back pay is an equitable remedy because it is a form of restitution. *Curtis v. Loether*, 415 US 189, 197 (1974). Here, restitution takes the form of money owed to Plaintiffs Rissanen, Baxley and Hood not as back pay, but as reimbursement to them for their purchase of Supplemental Medicare policies which the City should have purchased on

their behalf. The amount of restitution is easily ascertainable year to year. The three (3) Plaintiffs (Rissanen, Baxley, and Hood) who have already had to pay the cost of Medicare Supplement policies out of their pocket should be repaid these amounts.

20. An equitable remedy can also include the damages caused when a plaintiff sustains injury by quitting his job in reliance on a promise. *Craft v. S.C. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In Plaintiff Forner's case, he resigned before working for 30 years because he received a letter from the Mayor in 2009 indicating employees who retired before June of 2009 would be treated differently than those who retired after that date. By retiring early to obtain the benefit of what was promised to him, he failed to qualify for free insurance until age 65 as he only worked 28 years so he has been paying 16.5% and will continue to pay 16.5% of the cost of his insurance until age 65.

21. Due the Court's inability to force the City to change its budget to account for the cost of the Plaintiff's Medicare supplement policies, a lump sum shall be awarded to the Plaintiffs in the form of a judgment against the City.

22. Plaintiffs are entitled to attorney fees as they prevailed against a state entity. S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

Id. (emphasis added).

Defendant is a political subdivision of that State. Plaintiffs are the prevailing party, the City acted without substantial justification when it broke its promise. The cost to the City to keep its promise to these four (4) Plaintiffs was very minimal. There also appears to be no special circumstances presented by the City that would make an award of attorney fees unjust.

For all of the above reasons, I Order as follows:

1. Plaintiffs Rissanen, Forner, Baxley, and Hood shall be reimbursed the cost for any and all Medicare Supplement Policies they have purchased and will continue to purchase;
2. After considering the expert testimony, I conclude the Plaintiffs are entitled to \$214,236.15 as a judgment against the City. This includes actual damages, attorney's fees, and costs. The breakdown is shown on Exhibit A of this Order and attached and made part hereof;
3. The City of North Charleston is not responsible for purchasing or reimbursing the Plaintiffs for their dependent's policies.
4. Plaintiff Forner is not entitled to the \$20,000 he paid to qualify for retirement.
5. After consideration of the factors used for evaluating reasonable attorney's fees, this Court finds Plaintiffs' attorney fees and costs in the amount of \$51,100.00 reasonable and must be paid by the City pursuant to S.C. Code 15-77-300.
6. Plaintiffs are not entitled to compensation for their spouses concerning insurance matters.

AND IT IS SO ORDERED.

November 9, 2018
Charleston, South Carolina

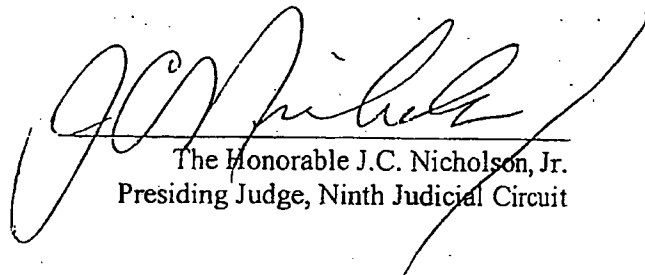

The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

EXHIBIT APlaintiffs' Allocation¹:

Alvar R. Rissanen - \$43,556.00

Michael H. Baxley - \$42,740.00

Willie L. Hood - \$38,633.00

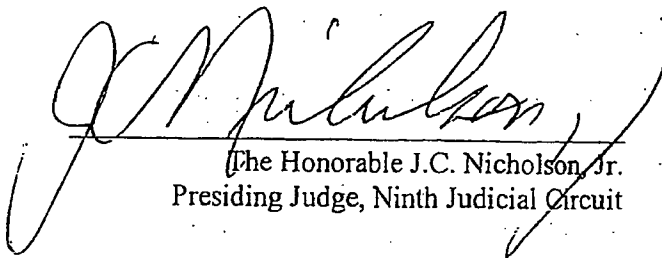
Clifford W. Forner - \$31,255.00

Total Plaintiff Amount - \$156,183.00

Attorney's fees based upon the Amended Affidavit is as follows²:

Attorney's Fees - \$55,335.00

Costs - \$2,713.15

November 9, 2018
Charleston, South Carolina


The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

FILED
2018 NOV 13 PM 2:04
CLERK OF COURT

¹ The breakdown shown for each respectful Plaintiff is shown in Plaintiff's Exhibit 11. Plaintiff's Exhibit 11 is a part of this Order by reference.

² The Amended Affidavit in Support of Attorney's Fees is filed with the Charleston County Clerk of Court. The Affidavit is a part of this Order by reference.

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-3210

Alvar R. Rissanen ET AL

PLAINTIFF(S)

City of North Charleston

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court. The Court has considered Defendant's Motion to Alter or Amend filed on November 26, 2018 and respectfully denies the motion.

This order ☒ ends ☐ does not end the case.

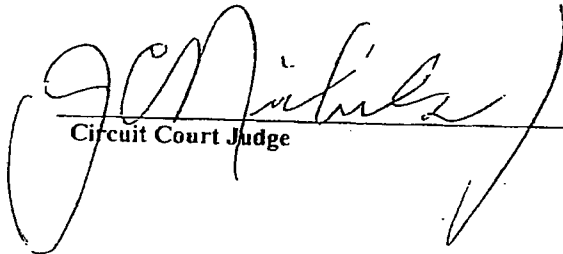
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
N/A		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

01/31/2019
Date

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Alvar R. Rissanen, Michael H.	)	
Baxley, Clifford W. Forner,	)	
and Willie L. Hood,	)	CASE NO. 2013-CP-10-03210
	)	
PLAINTIFFS,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
City of North Charleston,	)	
	)	
DEFENDANT.	)	
	)	

October 18, 2017 to October 19, 2017

Bench Trial

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson

A P P E A R A N C E S:

Nancy Bloodgood, Esquire
For the Plaintiff

Bob J. Conley, Esquire
For the Defense

Certified Transcript Provided For: Conley

Phyllis Norton, CVR-Master, *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

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(DW) - DENOTES DEFENSE WITNESS

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CERTIFICATION OF TRANSCRIPT -- 291

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

P L A N T I F F E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	5/13/98 Letter from Mayor Summey	45	47
2	5/4/09 Letter from Mayor Summey	45	47
3	6/23/11 Email from Astle to Rissanen	45	47
4	5/11/12 Letter from Ruth to Rissanen	45	47
5	Rissanen annual retirement forms	45	47
6	Baxley Annual Retirement Forms	45	47
7	Forner Annual Retirement Forms	46	47
8	12/3/10 Letter from Ruth to Hood	46	47
9	City of N. Chas. Retiree Benefit Plan	46	47
10	5/8/98 Memo from Summey to Council	46	47

D E F E N D A N T E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Hood Annual Retirement Form	46	47
2	1998 Workshop Minutes	46	47
3	1984 Ordinance	46	47
4	1986 Ordinance	46	47
5	2004 Personnel Policies	46	47
6	Current Code	46	47
7	May 2009 Minutes/Workshop	46	47
8	June 2009 Minutes	46	47
9	Funding	47	47
10	2009 Letter to Employees	47	47
11	Baxley Retirement	47	47
12	Rissanen Retirement	47	47
13	Hood June 2010 Letter	47	47
14	Forner Letter	47	47
15	Forner Retirement	47	47

C O U R T E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Baxley Deposition 1/4/16		
2	Rissanen Deposition 1/5/16		

1 THE COURT: All right. For the record if you would
2 state who is representing who, please.

3 MS. BLOODGOOD: Your Honor, I am Nancy Bloodgood. I am
4 representing the four plaintiffs.

5 MR. CONLEY: Bob Conley, Your Honor. I represent the
6 City of North Charleston.

7 THE COURT: Okay. I have very briefly looked at
8 y'all's pretrial briefs. And what I am going to do is just
9 ask y'all to make a very brief opening statement, sort of
10 narrow the issues down from your perspective.

11 And primarily what I was wanting to hear from you is -
12 some of the facts are pretty well set - and what facts are
13 in dispute and what the legal issues are.

14 I understand the statute of limitations and the --
15 whether or not the mayor had the authority to initially to
16 agree to give the insurance to these firemen for life,
17 number one. And whether -- what other issues are involved
18 from your perspective, Ms. Bloodgood?

19 MR. CONLEY: I am sorry, Your Honor. I am just still
20 trying to unpack my stuff. I apologize.

21 MS. BLOODGOOD: Your Honor, I ---

22 THE COURT: Why don't I just let y'all make some
23 opening statements. I will sit here and listen, okay.

24 MS. BLOODGOOD: Okay. One second, Your Honor.

25 THE COURT: And then you can call -- and then you can

1 call your first witness.

2 **OPENING STATEMENT BY MS. BLOODGOOD:**

3 Okay. Your Honor, as stated in the pretrial brief, the
4 only claim in the complaint is a promissory estoppel claim.

5 My plaintiffs are retired firefighters from the City of
6 North Charleston. The fire chief, Al Rissanen; and then the
7 personnel chief, Mike Baxley; the maintenance chief, Willie
8 Hood; and then Cliff Forner who was a battalion chief, they
9 all retired in 2005. And at the time they retired our
10 contention is that there was a promise made if you worked 30
11 years then when you retired you would have free insurance
12 for life.

13 How that panned out was that they would have free
14 insurance until they were 65 and then the City would pick up
15 the cost of the Medicare supplement when they became
16 Medicare eligible.

17 There was also a provision in a letter that you will
18 see, from the mayor to all of the employees, in about 1998
19 saying that also you can keep your dependents on the policy.

20 So there is an issue -- the issues of fact are going to
21 be was the promise made, was it understood and unambiguous,
22 was it followed - it was in this case for two of my clients
23 for four years and then for one for longer than that - and
24 then did they rely on it, and were they injured by their
25 reliance.

1 I think the promissory estoppel elements have already
2 been laid out by the Court of Appeals in the Bishop case.
3 And even though I think you will hear that Judge Gee in
4 Columbia in a matter regarding the certification of a class
5 up there on similar facts said that there had to be
6 detrimental reliance, the Court of Appeals has already set
7 forth the reliance criteria in its opinion when it remanded
8 the Columbia case back down to the court in Columbia.

9 That case has not yet been heard, Your Honor. And just
10 by way of background, because this might help you, in that
11 case it was also firefighters and police officers.

12 Similar thing, the City of Columbia promised for many
13 years - one of them had his father take advantage of this
14 benefit - you stay here 30 years, we can't pay you a high
15 salary, but if you stay here 30 years later on when you
16 retire you are not going to have to pay anything for your
17 insurance and so that is good.

18 So all of the plaintiffs in these cases are all
19 retired. They all did what they were supposed to do. These
20 are not current employees. They are all people who retired.
21 In my case retired for several years. And then a decision
22 was made by these various cities, in this case North
23 Charleston, that they were no longer going to pay in North
24 Charleston they weren't going to pay the Medicare
25 supplement.

1 Now they kept part of their promise. They are still
2 keeping it. Cliff Forner is still getting paid free
3 insurance - and he retired years ago - until he is 65. So I
4 think it is going to be hard for them to argue there is no
5 promise when there are three parts of it and they are still
6 keeping one.

7 They got rid of the part when -- they said when you
8 turn 65 we are not going to pay for the supplement. And
9 that is what affects Chief Hood. He would like ---

10 THE COURT: What did they do with the dependents, are
11 they still paying for the dependents?

12 MS. BLOODGOOD: They said -- no, they also said that
13 when you turn sixty- -- the language they used was when you
14 turn 65 all benefits from the City cease.

15 And that also meant, when my clients asked, does that
16 mean that our younger wives who have pre-existing conditions
17 and are nine years younger are going to have to -- we are
18 going to have to go find them insurance until they get to be
19 65. And the answer was yes.

20 And I have two plaintiffs, Chief Baxley and Chief
21 Rissanen who have wives now who are not yet 65. They are on
22 COBRA. But when the COBRA runs out they are going to have
23 four -- three -- in one case three years and in one case
24 four years of time where they have pre-existing conditions
25 that they will not be covered.

1 So right now what it happening is they are all paying
2 out of pocket for the supplement except for one of the
3 plaintiffs whose facts are a little bit different.

4 When he -- what they were told is, we are making a
5 change; now if you retire you are going to be grandfathered.

6 So one of them, Cliff Forner, retired so that he could
7 have the benefit of having most of his insurance paid.
8 Since he had not worked 30 years he only got 87 percent of
9 it paid. The City is still paying 87 percent of his
10 insurance.

11 So they are keeping their promise, but when he turns 65
12 he won't get the supplement. And right now he could not put
13 his wife on a policy or a dependent on the policy if he
14 wanted.

15 So two parts of the promise is what the City broke. I
16 think it -- so the issues are what was the promise, was it
17 unambiguous, was it relied on, and were they injured. And
18 that is -- those are the facts.

19 The -- there will be an issue as to in a strong mayor
20 form of government whether the mayor has the authority to
21 make those personnel decisions.

22 There will be testimony that this was wages, deferred
23 compensation, made to stop the turnover rate at the City and
24 to induce people to stay longer; so that they couldn't pay
25 them now, we don't have enough money now, but this is of

1 value to you.

2 And that is why we are here because of the money out of
3 pocket that they are now having to pay for something that
4 was promised to them.

5 Which while they worked they met the criteria; it was
6 paid to them, part of the promise. And then the City
7 decided it wasn't going to do that.

8 Also by way of background, the reason that the City
9 decided to stop keeping its promise after having kept it for
10 those many years was because there is something called GASB
11 45 which is an accounting principle that I think was in the
12 briefs.

13 Which governments used to not act like private
14 business. They used to do whatever they wanted. Come as
15 you -- you know, pay -- pay-as-you-go kind of thing and then
16 leave it to the next people down the road.

17 Well, GASB 45 said you cannot treat an obligation to
18 pay someone in the future as just a current obligation; it
19 is a contingent liability and it has got to be reflected as
20 such on your books.

21 When that happened then all of the cities in the state
22 said, ooh, well, we have got ten -- in this case North
23 Charleston had 67 retirees at the time. Which isn't a lot
24 for the amount of money that it would cost to keep this
25 supplement going for a 110 million dollar budget a year.

1 But what they decided was rather than worry about that, we
2 are just going to cut the benefit; we are not going to give
3 it to them.

4 So they are not -- that is why this has happened in a
5 few cities around the state. The cities that were trying to
6 retain police officers and firefighters with public funds
7 and paying lower salaries gave this as an inducement to keep
8 them.

9 So that is I think the issues that are before the
10 court.

11 THE COURT: Well, on this accounting principle did --
12 on the future liabilities did they have to show it all one
13 obligation, one fiscal year; or is it spread out over
14 several fiscal years?

15 MS. BLOODGOOD: Well, they had to come up with -- they
16 had to identify the amount. And for the first year they did
17 it it was -- they put aside \$6.5 million for the lifetime of
18 the program based on what they expected. They may tweak it
19 each year, but they don't do it every year.

20 THE COURT: Okay.

21 MS. BLOODGOOD: And that is another argument that I
22 have. GASB 45 is really a red herring. Yes, it was -- it
23 told cities sort of man up and admit this is a contingent
24 liability and you are going to have to pay for it. But the
25 cities ---

1 THE COURT: But it didn't affect the -- it didn't
2 affect the budgetary process if it was already budgeted,
3 based upon if they were running a balanced budget.

4 MS. BLOODGOOD: It was budgeted each year.

5 THE COURT: Okay.

6 MS. BLOODGOOD: And each year it was met. And each
7 year the City Council would approve it. And -- but then
8 when GASB 45 came in they said, well, we know it costs
9 you -- I am just making up numbers -- \$100 this year but ten
10 years out it is going to be a thousand dollars so we want
11 you to show on your books that you have this contingent
12 liability of a thousand dollars.

13 THE COURT: Okay.

14 MS. BLOODGOOD: And that is the other piece. Rather --
15 they easily could have increased the cost of the current
16 employees' healthcare.

17 Right now it is free for single-coverage employees in
18 North Charleston. It always has been. It always -- they
19 don't pay anything for single coverage, the ones who have
20 single coverage until they are 65. Because they just agreed
21 to pay the same that the active employees are paying. They
22 are paying nothing. Now if they want their dependents on,
23 they are paying.

24 The City is self-insured. It could easily have raised
25 the rate on current employees. It could have made lots of

1 decisions on how to fund the promise that it had made to its
2 retirees. Which is when I figure out their budget it is
3 something like .006 percent of their annual budget. It is
4 not much.

5 But of course the retirees around the state don't have
6 a voice. They are not -- they are not there day-to-day.
7 And quite honestly, Your Honor, I think they were an easy
8 target.

9 And so there is -- the issue is was a promise made, did
10 they rely on it, have they been injured by their reliance,
11 was it broken, and have they been injured.

12 We are not asking -- what we are asking for is
13 equitable relief. Made whole. They want to be only paid
14 back what they have paid out of pocket since the promise was
15 broken.

16 And they have those numbers. And they are, for these
17 four individuals, they are miniscule amounts. They are
18 three -- two, three, four thousand dollars since the promise
19 was broken.

20 And they want what they were promised. They want the
21 City to start paying the cost of their Medicare supplement.
22 Period. That is what they want.

23 Now, two of them also want to get their wives back on
24 the City's policy until they turn age 65. If they don't do
25 it, it is going to be a serious problem for them when the

1 COBRA ends.

2 And then the fourth person, Chief Forner, because he
3 was told you better retire right now or you are not going to
4 be grandfathered, you are not going to be vested, he retired
5 early and had to buy into his retirement in order to qualify
6 for the benefit.

7 A letter went out saying if you are not retired by a
8 certain date you will not have these benefits. And so ---

9 THE COURT: Which plaintiff was that?

10 MS. BLOODGOOD: That is Cliff Forner, F-O-R-N-E-R.

11 THE COURT: Okay.

12 MS. BLOODGOOD: So in our view it is a simple case, one
13 cause of action. And I will just be putting the witnesses
14 up to establish those facts.

15 THE COURT: Okay. Mr. Conley.

16 **OPENING STATEMENT BY MR. CONLEY:**

17 Good morning, Judge. There are many things in this
18 case that Ms. Bloodgood and I would agree on. As the court
19 pointed out earlier and made mention, you already recognized
20 there's a number of facts and instances in this case that
21 really aren't disputed; and in fact I would tell y'all that
22 we haven't told you already, Ms. Bloodgood and I basically
23 have a complete package of exhibits prepared to just put in
24 and with no objection to any of them.

25 THE COURT: Okay.

1 MR. CONLEY: I think where we differ on this case is
2 what it is really about. What this case was really about is
3 whether an entity like the City of North Charleston which
4 operates on a legislative basis has the ability to make
5 changes, has the ability to change their own ordinances in
6 fact.

7 The genesis of this case, Your Honor, begins -- and I
8 am not going to go through this in great detail. But I
9 think it is important historically. The City of North
10 Charleston didn't even exist until 1974. And prior to 1974
11 it had essentially been a public service district.

12 In '74 the City of North Charleston actually becomes a
13 municipality. And for 10 years, the first 10 years the City
14 existed, there were no means, method, or opportunity for
15 anybody who retired from the City to participate in the
16 City's self-funded healthcare plan post retirement.

17 Now granted, there weren't a lot of retirees during
18 that first ten years because it was a relatively new city.
19 In 1984 the City actually passed an ordinance. And that
20 ordinance is going to be part of the record for you.

21 That ordinance was the first time by ordinance that the
22 City of North Charleston decided to allow retirees with
23 certain parameters to participate in its self-funded
24 healthcare plan post retirement.

25 Interestingly, it had no cap on how long you could

1 participate in it. I mention that because it is interesting
2 that if you look at the ordinance it basically says if you
3 are a retiree and meets qualifications you can participate
4 in the City's self-funded healthcare plan post retirement
5 even after you are age 65. I mean there was no limitation
6 that at, well, at 65 you are on Medicare so you can't
7 participate anymore.

8 The other component of that that didn't exist in '84 as
9 well is from '84 until '98 for the 15 years that new
10 ordinance existed. So that ordinance that I am speaking
11 about existed from 1984 until 1998.

12 That ordinance also did not allow a participating
13 retiree to also have their dependents participate. So from
14 '84 to '98 it was solely an ordinance that allowed the
15 retiree, himself or herself, to participate post retirement
16 in the City's self-funded healthcare plan.

17 I want to note from a historical perspective and a
18 timeline perspective at this point three of the plaintiffs
19 in this case all were -- became City employees all the way
20 back in 1974 when the City was first became a municipality.

21 So by 1984 each of them had already been employed by
22 the City for ten years. And during those first ten years of
23 employment it is important to note there was no ordinance --
24 there was nothing that allowed them and they weren't
25 allowed, nor was any other retiree. Not that they were

1 retired, but no retiree was allowed to participate in the
2 City's healthcare plan post retirement.

3 So that situation and that ordinance exists, Your
4 Honor, from '84 until 1998. In 1998 the City changes the
5 City's allowance for retirees to participate in the self-
6 funded healthcare plan post retirement.

7 That change came about by way of initially the mayor,
8 Mayor Summey, who at that point had been the mayor for four
9 years I believe, making a recommendation to Council that
10 they give retirees a couple of things. One was that that
11 post-retirement benefit to be changed to allow them to
12 receive what I will call a reduction in what they had to
13 contribute if they wanted to participate post retirement.

14 And I guess that is an important piece I left out a
15 minute ago. From '84 to '98 if you were a retiree
16 participating in the healthcare plan post retirement you had
17 to -- you had to pay in full -- you had to pay your full
18 contribution to the plan.

19 There was no - I am going to use the term discount.
20 That is not the right word. But there was no discount just
21 because you were a retiree. You had to pay just as if you
22 were still working for the City.

23 So in '98 Mayor Summey recommends to City Council in
24 general a couple of things be done with the plan. One, that
25 retirees of course be allowed to continue to retire and to

1 participate in post retirement.

2 Two, that there be a methodology by which they can also
3 pay for dependents to participate in the plan post
4 retirement.

5 And three, the other substantial change, and maybe the
6 most substantial change, was that the City would begin to
7 not require some retirees depending on the number of the
8 years of service they had given to the City to pay the full
9 amount of coverage.

10 And by way of example, post '98 under the change if you
11 retired with 30 years of service to the City you as the
12 ex-employee, the retiree, could participate post retirement
13 in the City's healthcare plan with no cost to you. Zero
14 cost.

15 Now if you wanted to have your dependents participate
16 along with you you had to pay the full cost for them to
17 participate. Meaning whatever you would have paid for those
18 same dependents were you still working for the City is what
19 you would have paid.

20 It was -- it is a graded system the City put in place.
21 If you had 30 years of service to the City you paid nothing.
22 If you -- if you had 25 years -- between 25 and 30 years of
23 service I think you paid 87 point -- or you only paid 16-
24 point-something percent of what your contribution was. So
25 that went into effect in 1998. The mayor recommended it.

1 Council approved it. And that went into effect.

2 Now notably we are into 1998 now. And by 1998 the
3 three plaintiffs I mentioned a moment ago, Hood, Rissanen,
4 and Baxley, at this point in time they have each worked for
5 the City for 24 years.

6 All of them are senior -- very senior within the fire
7 department. Rissanen is the chief for -- the fire chief.
8 Baxley is an assistant fire chief I believe or deputy.
9 Whatever the label was at that time. I may be mislabeling
10 it. As was Hood.

11 These were very senior people by that point in the fire
12 department and within the City's organizational structure
13 alone.

14 Forner was already employed there at this point as
15 well. Although I believe he began working there maybe in
16 '84 or something. I could be wrong on that date. It really
17 doesn't matter for purposes of what I am telling the court
18 now. But nevertheless, he had been there for an extended
19 period of time by 1998 as well when this change is made.

20 And so that becomes the case. That continues to be the
21 case until, as Ms. Bloodgood mentioned a moment ago, we get
22 into 2008 and the Governmental Accounting Standards Board
23 issued what everybody refers to as GASB 45.

24 There is no question that GASB 45 did not as a matter
25 of law require the City to change how it accounted for,

1 budgeted or otherwise dealt with post-retirement healthcare
2 benefits.

3 But what you are going to hear in this case is from a
4 practical standpoint the City had no choice. Because as you
5 and Ms. Bloodgood discussed, what occurred was prior to
6 GASB 45, the best way to explain it, is the City could
7 account for that post-retirement healthcare liability, as I
8 will call it, on sort of a pay-as-you-go basis. They could
9 just look at it each year and budget for it the next year,
10 if that makes sense.

11 GASB 45 they couldn't -- from a practical and
12 functional standpoint they couldn't do that anymore. They
13 couldn't account for it, that liability on a pay-as-you-go
14 basis.

15 To the contrary what they were required to do is look
16 forward long into the future. And what ended up happening
17 was the City had to make a change to this post-retirement
18 healthcare benefit from a practical standpoint because is
19 simply could no longer budget for it.

20 It was literally going to be - and I could have my
21 numbers wrong - six, six-point-five million a year. Instead
22 of pay as you go which is several hundred thousand a year, I
23 think, they were suddenly going to have to start budgeting
24 into the budget for six-and-a-half million dollars a year.

25 The only way to functionally do that was to change the

1 plan. And that is exactly what the City decided to do. And
2 when I say the City, I mean City Council; the legislative
3 body that runs the City, the legislative body that controls
4 the passing of ordinances and all of those sorts of things
5 of the City.

6 The same City Council that passed the 1994 ordinance --
7 I mean not literally the same City Council, different
8 members. But the City Council that approved the '84
9 ordinance and passed it, the same City Council that made the
10 changes in '98, is now making another change in 2009.

11 What occurs -- the change that is made in '09 is this.

12 THE COURT: Was it '08 or '09?

13 MR. CONLEY: It actually -- GASB 45 comes out I believe
14 in '08.

15 THE COURT: Okay.

16 MR. CONLEY: The change didn't happen ---

17 THE COURT: The change was in '09 ---

18 MR. CONLEY: They ---

19 THE COURT: Okay.

20 MR. CONLEY: Yeah -- well, it is actually different
21 from that. They notified everyone in '09. And then the
22 change actually becomes effective July 1 of 2010.

23 THE COURT: Okay.

24 MR. CONLEY: That is how it sort of played out
25 historically. The change that occurred to retirees, such as

1 the plaintiffs in this case -- well, let me back up for a
2 moment.

3 So by the time we get to 2009 -- or 2008 three of the
4 plaintiffs in this case have already retired. They retired
5 back in 2005.

6 So by the time this change comes about they no longer
7 work for the City. Although they are retired and they are
8 participating on some level and the City has post-retirement
9 benefits provided by the healthcare.

10 The change that they are notified of that is going to
11 occur is this: One, as of July 1, 2010, if you are a
12 retiree participating in the plan the methodology upon which
13 your calculated contribution is going to change. And what
14 changed was effectively anybody that retired after July 1,
15 2010 - and that is important, retired after that date -
16 everybody start -- had to start making a contribution to the
17 plan.

18 If you are already retired by June 30th of 2009, Your
19 Honor, you were subject to the new plan with sort of one
20 notable exception, you fell subject to the prior plans
21 requirements or discounts in regard to what you had to pay
22 as an individual.

23 By way of example, Judge, if you had 30 years of
24 service from the City as of June of 2009 and you were
25 retired then you could continue to participate in the City's

1 plan post retirement and you as an individual just like the
2 old plan did not have to pay anything as a contribution --
3 now obviously if your -- if your -- if your spouse or your
4 dependents continues to participate they had to pay
5 something to it. So that was ---

6 THE COURT: Was it 100 percent for the spouse, or did
7 it all have a sliding scale based upon years of service?

8 MR. CONLEY: And it was 100 percent for an dependent.
9 That's been -- that has been consistent.

10 THE COURT: One hundred percent for the spouse -- or
11 the dependents?

12 MR. CONLEY: Correct.

13 THE COURT: Okay.

14 MR. CONLEY: You had to pay 100 percent. And that goes
15 all the way back to '98. Even in '98 when they allowed --
16 when they start allowing people to even put their dependents
17 on it you always had to pay the full rate for dependents.

18 THE COURT: Okay.

19 MR. CONLEY: There was -- the graduated discount, if
20 you will, did not apply to dependents. It only applied to
21 the retiree, himself or herself.

22 The other change that is made, Judge, is they are all
23 notified that as of the date they turn age 65 and are
24 Medicare eligible two things occur.

25 One, the retiree who is participating in the plan is no

1 longer eligible to participate in the City's self-funded
2 healthcare plan. Meaning as of that date of turning 65 and
3 become Medicare eligible they are no longer eligible to
4 participate in the City's self-funded fund.

5 The obvious consequence of that - and this is the other
6 change - is that the retirees' dependents, whether it is a
7 spouse or spouse and children, are no longer able to
8 participate in the plan because obviously the retiree is no
9 longer able to participate in the plan.

10 There is extensive notice that goes out to every
11 retiree at that point and notice that went out to all
12 employees. So there was really two notices that went out
13 about this change, Your Honor.

14 It's -- and the letters that went out are going to be
15 in the record for you. But the letters that went out to
16 employees and retirees are virtually identical in terms of
17 what it explained to them and not only in terms of what
18 changes were going to occur but secondarily actually some
19 explanation in the letter that was sent to them as to why
20 the City was required -- or making that change -- or those
21 changes I should say.

22 At that time, as I noted a minute ago, three of the
23 plaintiffs, Baxley, Hood and Rissanen had already retired
24 all the way back in 2005.

25 The only plaintiff that was still working in '09 when

1 these letters went out was Mr. Forner. Mr. Forner at that
2 point was still employed by the City. He had not retired.

3 Mr. Forner's position is -- and this is me talking. I
4 am not trying -- Mr. Forner's position is and I think this
5 was borne out even by his own testimony is that when he
6 found out about the changes to the plan he got angry and
7 upset and he decided to put in his own retirement papers and
8 he retired. He retired with I believe around twenty-seven,
9 twenty-seven-and-a-half years. I could be a little off on
10 that, Judge.

11 So by 2010 when all of this actually becomes effective,
12 if you will, all four of these gentlemen had retired from
13 the City at that point.

14 As Ms. Bloodgood said, two of the plaintiffs, Mr.
15 Rissanen and Mr. Baxley, both had spouses that were covered
16 on the plan. And of course once each of them turned age 65
17 those spouses could no longer participate.

18 Now one interesting aspect of this in terms of the
19 series of events and the timeline is that at the time Mr.
20 Baxley and Mr. Rissanen for instance retired, of course
21 neither of them was 65. And in fact neither of them turned
22 65 until last summer, meaning the summer of 2016.

23 Now what is notable about that is, if you look back,
24 the lawsuit was filed in 2013. So as of note as of the time
25 they filed this lawsuit in 2013 there was an argument about

1 whether they had even -- if there was a promise had it
2 even -- had anything even been broken. Mr. Hood sort of
3 likewise and similarly.

4 So in terms of a promise, Judge, what they want to
5 constitute as a promise in this case are basically
6 statements that they say that the mayor, Mayor Summey, made
7 to them over really a course of years about their, these
8 plaintiffs, going to have healthcare their entire life
9 provided either by way of or through the City.

10 Now as Ms. Bloodgood noted, one of the interesting
11 aspects of this case is that her client's claim that they
12 want the City to reimburse them for and pay for going
13 forward a Medicare supplement.

14 Item of note there, there will be no issue in this case
15 disputed, I don't think, that the City has never paid for or
16 provided anybody with a Medicare supplement. It just it has
17 never been provided. Never.

18 The other interesting part of this, Judge, among the
19 many interesting parts is that ---

20 THE COURT: Well, let me ask you a question.

21 MR. CONLEY: Yes, sir.

22 THE COURT: I mean they never provided for because I
23 assume the issue never arose, they hadn't reached 65 from
24 what you said.

25 MR. CONLEY: Well, other people certainly had within

1 the City. These ---

2 THE COURT: I mean had other people had this same
3 promise?

4 MR. CONLEY: Nobody has alleged they have.

5 THE COURT: Pardon?

6 MR. CONLEY: These are the only four people that
7 allege the City has promised them anything in regard to
8 post-retirement healthcare.

9 THE COURT: All right.

10 MR. CONLEY: At least they are the only four that
11 brought a lawsuit. I guess I should say that.

12 THE COURT: Okay. All right.

13 MR. CONLEY: I don't know who else has alleged it.

14 THE COURT: Okay.

15 MR. CONLEY: Judge, one of the -- well, obviously one
16 issue in this case was any promise made to them. We contend
17 there was no promise. And even if -- even if -- even if
18 someone were going to look at some of the things you may
19 hear they claim Mayor Summey said to them, that it would be
20 I think impossible to claim or to assert it wasn't an
21 ambiguous promise.

22 There is also the issue of -- well, even if there was a
23 promise -- let's assume something Mayor Summey said
24 constituted a promise. Was it reasonable for these
25 gentlemen to rely on that promise? We would content it was

1 not.

2 As I mentioned a moment ago, all four of these
3 plaintiffs were very senior individuals within the City of
4 North Charleston Fire Department. Mr. Rissanen is the
5 former chief of the fire department. Mr. Baxley and Mr.
6 Hood were either assistant or deputy chiefs. Mr. Forner at
7 the time he retired and for years prior to that was a
8 battalion chief.

9 These were not lower-level rank and file employees of
10 the City. And in fact all of them acknowledge that
11 throughout their employment they had access to the City's
12 ordinances, they had access to the City's policies. They
13 had access to all of this information that I have described
14 to you going back to 1984 about what the terms and
15 conditions were with the post-retirement healthcare
16 benefits.

17 So the notion that somehow they were promised something
18 over the years, there is no way they could I think or we
19 think, the City contends under the law, rely on those
20 promises. Because the City is allegedly run by a
21 legislative body, City Council; and there were ordinances
22 that clearly don't -- in place that clearly don't support
23 what they contend the mayor was promising.

24 Meaning there were ordinances -- these ordinances that
25 were in place, policies that were in place, approved by City

1 Council, if you were to believe what they will contend Mayor
2 Summey said, what he said would be in total contravention of
3 those policies.

4 The point being, Your Honor, is a mayor, no City
5 employee, can obligate a legislative body like a City
6 Council to those kinds of obligations going forward.

7 It is a legislative act. The money that is used to
8 fund these benefits, whether they are ongoing with current
9 employees of whether they are post retirement, that is a --
10 that is a function of the City's budgetary system. That is
11 a function of the City's ability to pay for it, Your Honor.

12 And we believe, the City believes, that it is just
13 undeniably clear that that is a legislative act that only
14 Council can make any kinds of changes to it. In other
15 words, only Council can fund it. And Council decided not to
16 fund it any longer in the way it had been funded as of 2008,
17 2009.

18 What the plaintiffs really seek to do here is ask this
19 court to force the City of North Charleston to do something
20 that its own legislative body, City Council, decided not to
21 do.

22 We, the City, could contend that that is just wholly
23 beyond the purview, the jurisdiction and the authority of
24 any court to dictate what a legislative body what they can
25 do in terms of a legislative access to the passing of an

1 ordinance in regard to its own budget or for the provision
2 of benefits to employees.

3 The consequence of a court saying differently, that
4 somehow a verbal promise by a City employee, whether it be
5 the mayor or human resources, can somehow bind a
6 governmental entity, whether it be this municipality,
7 whether it be a state government entity, whether it be a
8 county entity, the consequences of a court saying that under
9 the doctrine of promissory estoppel in this case a
10 government entity can be bound by the words of its mayor or
11 its human resource representative about how their funds are
12 going to be spent, the consequences of that are really
13 unbelievable.

14 THE COURT: Well, how ---

15 MR. CONLEY: And it is ---

16 THE COURT: Based on that argument how does -- how does
17 the City ever bind the City?

18 MR. CONLEY: Well, the City binds the City by way
19 of ---

20 THE COURT: I mean every contract that is passed ---

21 MR. CONLEY: No, Your Honor.

22 THE COURT: --- does the City Council pass an ordinance
23 approving that contract? How do you ever bind the City
24 under your argument?

25 MR. CONLEY: Sure, and I think to refine my argument

1 there a little bit, Judge, the law in this state we believe
2 as to promissory estoppel is essentially when it comes to
3 legislative acts no individual within the City can bind the
4 City.

5 Now as to contractual matters that might be -- that is
6 different. Clearly there are instances where a mayor or
7 another individual may be able to bind the City
8 contractually in some circumstances.

9 But as to a legislative event and in this -- in this
10 instance the real event is the passing a budget.

11 THE COURT: Wait a minute. That is promissory estoppel
12 saying there was a promise which amounted to a binding
13 agreement -- or imposing the agreement on the City.

14 MR. CONLEY: Exactly, Your Honor. But what they are
15 trying to do by way of that is override the legislative
16 function of Council which didn't promise them anything.

17 THE COURT: Well, I mean who has ---

18 MR. CONLEY: Council didn't promise ---

19 THE COURT: Who has the authority to bind the City of
20 North Charleston ---

21 MR. CONLEY: It depends ---

22 THE COURT: --- through a contract?

23 MR. CONLEY: Potentially the mayor.

24 THE COURT: Okay.

25 MR. CONLEY: But this isn't a contractual issue.

1 THE COURT: The mayor. Okay.

2 MR. CONLEY: And we need to be clear here. There is no
3 breach of contract claim here. This is not a contract
4 claim.

5 THE COURT: I understand. I understand.

6 MR. CONLEY: This is purely promissory estoppel claim.
7 And so ---

8 THE COURT: Well, let me ask you this.

9 MR. CONLEY: --- you can't ---

10 THE COURT: Let's say the mayor binds the City under a
11 contract. And I understand promissory estoppel. Can
12 Council later refute that, say in five years or ten years
13 refute it and say, hey, this is a new Council and we are not
14 obligated by that binding -- that contract?

15 MR. CONLEY: I mean I think -- I think you had hit upon
16 one of the points in this case, one of the things that we
17 point out in our pretrial brief. And this is something I
18 was going to mention next, Your Honor, is that, you know, we
19 believe the law in this state is very clear is that one city
20 council can't bind another one.

21 And it can't. It is a legislative body. It is subject
22 to the electorate out there in North Charleston as to who is
23 going to serve, just as the mayor's position is subject to
24 the electorate.

25 So to answer your question, yes, the mayor for the City

1 of North Charleston has some authority to bind the City in
2 some instances. I will give you an example.

3 THE COURT: For what time period; until the next
4 election?

5 MR. CONLEY: Well, in some instances no time period. I
6 mean, again, the issue here is we have a legislative body
7 that took legislative action. That is not subject to being
8 overridden by the words or statements of another individual
9 in the government. And so the legislative act that was
10 enacted, it simply can't be undone and it can't be
11 contradicted by way of statements that a municipality or a
12 city or ---

13 THE COURT: All right. Let me ---

14 MR. CONLEY: --- government employee might make in that
15 regard.

16 THE COURT: Ms. Bloodgood, let me ask you a question
17 while it is on my mind. If there is an ordinance contrary
18 to the promise allegedly made by the mayor to your clients
19 how can -- and there is an ordinance that contradicts that,
20 how can the court imposed that promissory estoppel on that
21 promise when the ordinances are contrary to that?

22 MS. BLOODGOOD: Right. Your Honor, the ordinance in
23 this case - and I was going to address that - is not
24 contrary to it. The 1984-23 ordinance what it states is
25 that retirees who are either 55 or have 30 years of service

1 with the City will be eligible to pay for ---

2 THE COURT: All right, so your position is real simple,
3 the ordinance is not in conflict. The City says it is. So
4 that is a factual dispute?

5 MS. BLOODGOOD: Yes, and I can -- I will explain.

6 THE COURT: Okay. That is fine. That is a factual
7 dispute. That is all I wanted to know.

8 Let me ask you this. Were you familiar with the, I
9 guess, Preston and the County of Anderson situation did you
10 see that all the way through?

11 MS. BLOODGOOD: I wasn't involved in it. I read the
12 decision.

13 THE COURT: What did that decision say? I remember
14 it -- reading about it in the paper. I don't remember what
15 it said.

16 MS. BLOODGOOD: It said that -- and I am looking at Al
17 because he knows the City stuff more than I do. I haven't
18 done it lately. However, I believe it says it overthrew the
19 relief that had been granted to Joey Preston because the
20 members who voted on the issue in Council should either have
21 recused themselves and they didn't so their vote didn't
22 account and then there wasn't a quorum with the ones who
23 were left so it was an invalid action.

24 THE COURT: Okay.

25 MS. BLOODGOOD: In short.

1 THE COURT: All right.

2 MS. BLOODGOOD: There was more to it. But I think that
3 was the gist.

4 THE COURT: Okay. All right.

5 Go ahead, Mr. Conley. I just wanted to ask that
6 question while it was on my mind.

7 MR. CONLEY: No, Judge.

8 Let me touch upon another central issue in this case,
9 and that is the plaintiff's damages. The City's position
10 and it is our position that the doctrine of promissory
11 estoppel in this state it is just unequivocally clear that
12 the kinds of damages the plaintiff seek here are
13 unrecoverable.

14 As Ms. Bloodgood indicated, one of the things they are
15 seeking is equitable relief from this court. As I hear it
16 they are seeking this court really to do three things.

17 One, by equitable relief issue an order that would
18 require the City of North Charleston going forward to
19 allow -- to pay for a Medicare supplement for each of the
20 plaintiffs.

21 I also understand her to say that the second component
22 of damages they are seeking is that the City be required to
23 reimburse them, pay them damages if you will, for what they
24 to date have paid out in funds to pay for a Medicare
25 supplement.

1 The third item I understand the plaintiffs to claim is
2 again for the City for this court to issue an order imposing
3 equitable relief and ordering the City to allow Mr. Baxley
4 and Mr. Rissanen's spouses to continue to participate in the
5 plan until they are 65.

6 Your Honor, the law is very clear in this state when it
7 comes to the doctrine of promissory estoppel. The only
8 things a plaintiff is ever entitled to are reliance damages.
9 These plaintiffs have no reliance damages. And they have
10 testified they have no reliance damages.

11 By way of example, all of them have testified that they
12 never even really looked for another job the entire thirty
13 plus, or if you are talking about three of the plaintiff,
14 twenty-seven for Mr. Forner, that they worked for the City.

15 They never -- they can't present other offers of
16 employment they got that would have -- that they turned
17 down, if you will, to stay at the City somehow in return for
18 this post-retirement healthcare benefit in perpetuity they
19 claim.

20 They have no reliance damages, Your Honor. The damages
21 they claim and that Ms. Bloodgood just articulated to her --
22 to you are not reliance damages. That is equitable relief
23 which the doctrine of promissory estoppel in this case this
24 state doesn't allow it. The law is very clear.

25 What are their -- what are their reliance damages? I

1 think you are going to hear they don't have any. There's
2 not a single one of them that is going to be able to tell
3 you, tell this court, that they turned down another
4 position, that they forego -- that they forewent the
5 opportunity to take another job that would have paid them
6 more. None of them are going to be able to tell you that.
7 They have all testified in their depositions they did not.

8 They all -- and that is not -- that is actually a good
9 thing because they enjoy working for the City. They liked
10 their jobs and they enjoyed what they did. It was clear why
11 they didn't go looking for something else. That is why they
12 stayed there so long. These were good employees. These
13 were guys that rose to the top of the ranks in the City's
14 fire department obviously.

15 But they don't have reliance damages here, Your Honor.
16 They will never have them. And that is the only thing they
17 can recover here.

18 So even if this court were to find that there was a
19 promise and the promise was broken and somehow they had a
20 right to rely on that promise, so on and so forth, they
21 don't have any recoverable damages.

22 The damages that Ms. Bloodgood has articulated to here
23 are legally barred in this state. There is no case law that
24 supports the recovery of those kinds of damages. There is
25 no case law in this state supporting the notion that by way

1 of a promissory estoppel claim the court can essentially
2 impose the promise on the City. That is not the law of this
3 state.

4 I think the court can look back over every promissory
5 estoppel case there is in South Carolina and what you will
6 find is consistent, you can recover your reliance damages,
7 you can seek the promise; you can't get the promise by way
8 of a promissory estoppel lawsuit.

9 That is not -- that is damage -- damages you can
10 recover. It is not a remedy you can obtain under promissory
11 estoppel claim. Which as Ms. Bloodgood has pointed out and
12 we all acknowledge, that is the only claim that has been
13 made here. They don't have any reliance damages. They have
14 never had them. And they don't have them now.

15 Now Mr. Forner left under different circumstances. You
16 know, you will hear from him he got angry when he heard --
17 when he got the letter in 2009 that the benefits were going
18 to change and he quit. He retired. I shouldn't say he
19 quit; he put in his retirement notice and he retired.

20 That is why he retired when he did. He didn't retire
21 when he did because some promise had been broken to him at
22 that point. He retired because he got upset because he
23 found out there was going to be a change.

24 That is not reliance damages. The whole notion that
25 somehow he is -- he can recover something beyond for I guess

1 whenever he had to cash out through retirement or something,
2 that is not reliance damages. Those aren't damages that are
3 recoverable in this case, ever.

4 The notion that this court can somehow imposed upon the
5 City by way of -- by way of equitable relief in an order
6 that it allow the spouses of Rissanen and Baxley to
7 participate in the plan, just as a fundamental note, neither
8 one of those ladies is a plaintiff in this case. They never
9 have been.

10 There is no allegation by anybody in this case that the
11 City ever made a promise to either one of them. That is
12 just a pillar of what is a problem with that portion of the
13 damage claim they apparently are going to make.

14 Beyond that it's the same issue as I would address with
15 the retirees themselves, and that this court simply can't
16 issue an order that imposes equitable relief on the City or
17 an order that gives them the promise they claim was made to
18 them.

19 All the City can do is hear about and determine what
20 they gave up, what they forewent, in return for the promise
21 they allege the City made. They didn't forgo anything.
22 They didn't -- they didn't turn down any jobs. They didn't
23 turn down any positions elsewhere.

24 THE COURT: Well, but you keep saying -- I understand
25 what you are saying. I think there are cases that probably

1 do say some of that.

2 But my question to you is why can't -- isn't there an
3 argument -- and I am not saying this is right or wrong. I
4 am just asking you the question: Reliance on a promise to
5 continue employment, why isn't that reliance damages?

6 Now how you quantify that is -- I don't know. But you
7 keep saying they have got to turn down another job. But why
8 isn't the continued employment with the City of North
9 Charleston in reliance on those promises reliance damages?

10 MR. CONLEY: They suffered no detriment of that. The
11 suffered no detriment.

12 THE COURT: Well, they suffered detriment in that they
13 had to pay money.

14 MR. CONLEY: That is not ---

15 THE COURT: Okay. I am not saying that is right or
16 wrong. I just asked you the question.

17 MR. CONLEY: I would just simply have to take the
18 position that is not detrimental at all that you have got a
19 job with the City and you decided to keep it.

20 What is detrimental is if they can show this court that
21 I could have had "X" and I turned "X" down because this
22 promise the City made me was too good to leave here.

23 And they don't have it. They don't have det- -- they
24 don't have reliance damages in this case. And so it is
25 another underlying pillar of where their promissory estoppel

1 claims fails.

2 And even if you get past all of the other elements ---

3 THE COURT: Okay. All right.

4 MR. CONLEY: --- you get to that one and it just it
5 fails, Your Honor, that they don't have those -- they don't
6 have those reliance damages.

7 THE COURT: Anything else?

8 MR. CONLEY: And they won't have them.

9 The other item I would note in terms of this equitable
10 relief they seek, I assume each of these plaintiffs can
11 testify to the court about how much if anything any of them
12 paid out of pocket for a Medicare supplement today.

13 I would suggest that they can't testify about anything
14 that is going to cost them in the future. There is no way
15 they are qualified to know that. At most what they can
16 provide to this court by way of that is what ---

17 THE COURT: Well, it is just as easy as the City
18 projecting out what the payment is going to be ---

19 MR. CONLEY: I don't think ---

20 THE COURT: --- under the accounting plan. I mean do
21 it the same way. But go ahead.

22 MR. CONLEY: Well, my position is they can't, Your
23 Honor. I mean they don't have an expert witness. They
24 identified one ---

25 THE COURT: Well, that may be; they may not have --

1 they may not be able to bring it out from an evidence
2 standpoint. But I mean ---

3 MR. CONLEY: But that's ---

4 THE COURT: --- it can be done.

5 MR. CONLEY: I am not saying it can't be done.

6 THE COURT: Okay.

7 MR. CONLEY: I am saying ---

8 THE COURT: Okay, I thought you were saying it can't be
9 done.

10 MR. CONLEY: No, no, no, no. I misspoke. I am not
11 saying it can't be done. I am saying these plaintiffs can't
12 do it. They don't have the admissible evidence that would
13 allow them ---

14 THE COURT: Okay.

15 MR. CONLEY: --- to provide ---

16 THE COURT: Okay. That is an evidence question.

17 MR. CONLEY: --- that information to the court.

18 And, so, Your Honor, in short, we believe what the
19 plaintiffs seek to impose upon the City in this circumstance
20 is just completely contrary to well-established law in this
21 state. It is contrary to the well-established law of
22 promissory estoppel.

23 And perhaps more importantly, it is contrary to the
24 well-established law in this state about the deference and
25 the role of the legislative body. In that ---

1 THE COURT: Mr. Conley, I hate to cut you off. We are
2 getting into arguments.

3 MR.. CONLEY: I understand.

4 THE COURT: I am not trying -- I don't want ---

5 MR. CONLEY: I didn't want to do that.

6 THE COURT: I don't want to get into arguments at this
7 time because I don't know factually what I am going to hear,
8 okay.

9 MR. CONLEY: And I don't want to do that either.

10 THE COURT: We will hear arguments at the end of the
11 case. I will be happy to hear you then. But I don't
12 particularly want y'all to argue your case. Just tell me
13 what your case is about, ---

14 MR. CONLEY: Sure.

15 THE COURT: --- okay.

16 MR. CONLEY: And I think I have told you that other
17 than one thing I -- one other thing I would point out other
18 than to the extent the court might have any questions at
19 this point, and that is Mr. Forner doesn't turn 65 until
20 2024.

21 THE COURT: Okay.

22 MR. CONLEY: As we sit here today in this courtroom he
23 is still receiving exactly what he claims the City promised
24 him. If that make sense.

25 He hasn't reached 65. He is still -- he is still

1 getting exactly what he claims the City promised him. He
2 suffered -- he hasn't suffered any -- even any arguable
3 damage at this point other than he decided to retire early.

4 But, again, he didn't decide to retire early based on a
5 promise. He decided to retire early based on a letter he
6 received from the City about how the policy -- the plan was
7 going to change.

8 So that is what we believe this case is about, Your
9 Honor. I probably told you too much. But I hope I have
10 answered any of the questions you may have.

11 THE COURT: Thank you so very much, Mr. Conley.

12 Why don't y'all go ahead and mark whatever exhibits
13 y'all have agreed on first before we call your witness.

14 (WHEREUPON, Plaintiff's Exhibit Number 1, 5/13/98 letter
15 from Mayor Summey, was marked for identification.)

16 (WHEREUPON, Plaintiff's Exhibit Number 2, 5/4/09 letter from
17 mayor, was marked for identification.)

18 (WHEREUPON, Plaintiff's Exhibit Number 3, 6/23/11 email, was
19 marked for identification.)

20 (WHEREUPON, Plaintiff's Exhibit Number 4, 5/11/12 letter
21 from Ruth, was marked for identification.)

22 (WHEREUPON, Plaintiff's Exhibit Number 5, Rissanen annual
23 retirement forms, was marked for identification.)

24 (WHEREUPON, Plaintiff's Exhibit Number 6, Baxley annual
25 retirement forms, was marked for identification.)

1 (WHEREUPON, Plaintiff's Exhibit Number 7, Former annual
2 retirement forms, was marked for identification.)
3 (WHEREUPON, Plaintiff's Exhibit Number 8, 12/3/10 letter
4 from Ruth, was marked for identification.)
5 (WHEREUPON, Plaintiff's Exhibit Number 9, City of North
6 Charleston Retiree Plan 2009, was marked for
7 identification.)
8 (WHEREUPON, Plaintiff's Exhibit Number 10, 5/8/98 memo from
9 Mayor Summey, was marked for identification.)
10 (WHEREUPON, Defendant's Exhibit Number 1, Hood annual
11 retirement form, was marked for identification.)
12 (WHEREUPON, Defendant's Exhibit Number 2, 1998 workshop
13 minutes, was marked for identification.)
14 (WHEREUPON, Defendant's Exhibit Number 3, 1984 ordinance,
15 was marked for identification.)
16 (WHEREUPON, Defendant's Exhibit Number 4, 1986 ordinance,
17 was marked for identification.)
18 (WHEREUPON, Defendant's Exhibit Number 5, executive order
19 2004 personnel policy, was marked for identification.)
20 (WHEREUPON, Defendant's Exhibit Number 6, portion of current
21 code, was marked for identification.)
22 (WHEREUPON, Defendant's Exhibit Number 7, May 2009
23 minutes/workshop, was marked for identification.)
24 (WHEREUPON, Defendant's Exhibit Number 8, June 2009 minutes,
25 was marked for identification.)

1 (WHEREUPON, Defendant's Exhibit Number 9, funding, was
2 marked for identification.)
3 (WHEREUPON, Defendant's Exhibit Number 10, 2009 letter to
4 all employees, was marked for identification.)
5 (WHEREUPON, Defendant's Exhibit Number 11, Baxley
6 retirement, was marked for identification.)
7 (WHEREUPON, Defendant's Exhibit Number 12, Rissanen
8 retirement, was marked for identification.)
9 (WHEREUPON, Defendant's Exhibit Number 13, Hood June 2010
10 letter, was marked for identification.)
11 (WHEREUPON, Defendant's Exhibit Number 14, Forner letter,
12 was marked for identification.)
13 (WHEREUPON, Defendant's Exhibit Number 15, Forner
14 retirement, was marked for identification.)
15 (WHEREUPON, Plaintiff's Exhibit Number 1 through 10 was
16 admitted into evidence.)
17 (WHEREUPON, Defendant's Exhibit Number 1 through 15 was
18 admitted into evidence.)
19 THE COURT: I am not trying to hurry you, okay. Take
20 your time.
21 MS. BLOODGOOD: Okay. Your Honor, I am going to call
22 Chief Rissanen to the stand.
23 THE COURT: Okay.
24 (WHEREUPON, the witness was duly sworn.)
25 THE CLERK: Sir, for the record if you will please

1 state your name, spelling your last name.

2 THE WITNESS: The name is Alvar Rafiel Rissanen, Jr.

3 Spelling the last name is R-I-S-S-A-N-E-N.

4 **DIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF ALVAR RISSANEN:**

5 Q Chief Rissanen, were your employed by the North
6 Charleston Fire Department?

7 A Yes, ma'am.

8 Q And how many years were you employed by the North
9 Charleston Fire Department?

10 A Thirty-five-and-a-half.

11 Q Approximately what years did you work for the
12 Department?

13 A I originally went to work in -- April 17th, 1970, for
14 the North Charleston -- I think it was the Public Service
15 District Fire Department. A few years later the City came
16 into existence and I chose to go with the City of North
17 Charleston. Worked there to my retirement.

18 Q And when did you retire?

19 A September 30th, 19-- 2005. I'm sorry.

20 Q How old were you at the time you retired?

21 A Fifty-four.

22 Q And at the time you retired how many years' service did
23 you have with the North Charleston Fire Department?

24 A I consider all of my 35-and-a-half years with the North
25 Charleston Fire Department. The City came in -- I think was

- 1 chartered in 1972. So since that time.
- 2 Q Okay. Certainly more than 30 years?
- 3 A Yes, ma'am.
- 4 Q And what was your job title at the time of your
5 retirement?
- 6 A Fire chief of the City of Charleston.
- 7 Q Okay. And how long have you been the fire chief for
8 the City of North Charleston?
- 9 A Close to 13 years.
- 10 Q And what is your age today as we are sitting here?
- 11 A Sixty-six.
- 12 Q Now did the City of North Charleston provide health
13 insurance to you while you were employed?
- 14 A Yes, ma'am, it did.
- 15 Q Okay. And did you ever get single coverage or did you
16 always get coverage for your dependents?
- 17 A When I was employed I had the family plan.
- 18 Q Okay.
- 19 A And so it was for me and the -- my dependents.
- 20 Q Okay. As fire chief are you -- did you know the single
21 coverage, the cost of single coverage, for an employee while
22 they were at the Fire Department?
- 23 A Probably not as much -- probably wasn't aware of the
24 exact cost until after I retired.
- 25 Q Okay. And sitting here today do you know what the cost

1 was in Charleston for single coverage, a single employee
2 what did they have to pay?
3 A I think was like \$550 for the single employee.
4 Q For a single employee's health insurance?
5 A I believe so.
6 Q Is that possible that that was for the family coverage?
7 A The family coverage when I was paying family coverage
8 it was -- it really went up each year. I think it started
9 when I first retired like four or five hundred dollars. And
10 then it went on up to I think to as much as \$1,300 a month.
11 Q Okay, I am talking in 1984, ---
12 A Oh.
13 Q --- 1998.
14 A I'm sorry.
15 Q So let's -- way in the back when you first started
16 working there did any employee have to pay for single-
17 coverage health insurance?
18 A I don't recall us having to pay it back then.
19 Q Okay. You had to pay if you wanted to put your family
20 on the plan, correct?
21 A I don't recall us having to put the family on the plan
22 as far as paying for the ---
23 Q So that was free for a while?
24 A To the best of my recollection it was.
25 Q Okay. So it was free for individuals and the family?

1 A To the best of my recollection, yes, ma'am.

2 Q Okay. Now when you retired in 2005 what was the status
3 of your insurance; what were you paying and what was the
4 City paying?

5 A When I retired in 2005 my insurance was free. And I
6 was -- herein, like I say, paying I think it was five --
7 four or five, six hundred dollars per month for the family
8 plan.

9 Q Okay. So that \$500 you talked about before was what
10 you were paying for the family plan when you retired?

11 A No, the four or five hundred was what the City said
12 that they were paying for me. And the -- oh, I'm sorry.
13 Yes, ma'am.

14 Q Out of your pocket?

15 A I am getting two things. Yeah, I am getting it all
16 mixed up. I am sorry.

17 Q Let me break it up. You retired in 2005?

18 A Yes, ma'am.

19 Q And at that time you didn't have to pay anything
20 for ---

21 A I paid ---

22 Q --- your insurance?

23 A That is correct.

24 Q Did you ever have to pay anything for your insurance in
25 the 35 years if it was just single coverage?

- 1 A Not to my recollection.
- 2 Q Okay. But you did have to pay for your dependents when
3 you retired, correct?
- 4 A Yes, ma'am.
- 5 Q And how much did you pay for your dependents?
- 6 A And here again, year to year it went up. I believe it
7 might have been around \$500 in 2005. And then it went up to
8 as high as I think \$1,308. And then it came back down to I
9 believe it was \$1,110, in that area.
- 10 Q Okay. And were you the fire chief in 1998 when Mayor
11 Summey was elect -- or appointed to filling an unfilled term
12 in the City?
- 13 A Yes, ma'am, I was.
- 14 Q And do you recall any conversations, any discussions,
15 any statements made by Mayor Summey about retiree healthcare
16 when he became mayor?
- 17 A When he became mayor?
- 18 Q Or shortly around the time he became mayor.
- 19 A I remember in the 1998 time I remember hearing about
20 the I guess it would be the -- what would you call it -- the
21 health -- retirement -- health benefit plan.
- 22 Q Okay. And tell me ---
- 23 A I don't remember ---
- 24 Q --- about that.
- 25 A I'm sorry?

1 Q Tell me what you heard.

2 A I don't remember exactly who it was from, whether it
3 was straight out of the mayor's mouth at first or Mr.
4 Connella who was the personnel director or just who it was;
5 but I heard that it going to be the employee -- retired
6 employees were going to have free healthcare up until they
7 obtained the age of 65 and if they have any dependents the
8 dependents would be able to stay on the plan after the
9 employee became 65 and until that dependent was to become 65
10 and that as long as we paid the premiums; and that all of
11 the employees, retired employees, would get a supplement,
12 free supplement from the City of North Charleston for the
13 rest of their life after they had obtained the age of 65.

14 Q Okay. So there were three parts to this promise?

15 A Yes.

16 Q And were they clear to you; did you have any questions
17 about what the promise was; did you understand what was
18 being promised to you?

19 A I understood it was a fantastic program. It appeared
20 to be clear to me. It was talked among a lot of people.

21 Q Okay. Well, tell how it -- where was it talked about?

22 A I'm sorry, ma'am?

23 Q Where was the promise talked about?

24 A Wow. I know the mayor had mentioned it in breakfast
25 meetings. We had luncheons at the fire stations. We had

1 214 employees. And almost on an annual basis the mayor came
2 around. We would have lunches at the stations. It gave him
3 the opportunity to sit in the stations and talk with the
4 people face to face.

5 We often -- because firefighters want to know what they
6 are making as compared to other places. There were some
7 firefighters of course that were angry about the pay.
8 Sometimes you can't satisfy them. And they would bring it
9 up. And they would bring it up to the mayor.

10 But often the mayor would just bring it out on his own.
11 And it was great to establish the relationship and show the
12 employees what he was providing.

13 Q Okay, when you say the mayor would bring it out what do
14 you mean by it? What would he say?

15 A He would say things like: You know, y'all've got a
16 honey of a deal. Look what we are providing you. You know,
17 you are going to have free health-insurance until you turn
18 65. You are going to have -- your dependents are going to
19 be on it until they turn 65 after you do, and you are going
20 to have a free supplement for the rest of your life. You
21 are going to have free health insurance for the rest of your
22 life.

23 Q Okay. And was there any part of that three-part
24 promise that was especially important to you?

25 A The biggest -- well, of course the having free health

1 insurance until I turned 65 was important. But my wife is
2 nine -- eight -- eight years, two months my junior; and she
3 has diabetes.

4 And so having the opportunity -- or the understanding
5 to know that I was going to lose that ability to have her
6 covered under the City's plan after I turned 65 that it --
7 that was devastated to us.

8 Q Okay. I am going to show you what we have marked as
9 Plaintiff's Exhibit 1.

10 A Yes, ma'am.

11 Q And ask you if you can tell me what that document is.

12 A It is a memorandum from Mayor Keith Summey to the
13 members of the finance committee. And it says reference in
14 health insurance, retired employees.

15 And there is a paragraph down here that also states --
16 it says: Once the retired employee reaches the age of
17 Medicare eligibility then the City would purchase a Medicare
18 supplement policy. This coverage would be strictly for the
19 employee and would not cover any family members. An
20 employee would be able to enroll a spouse or family at the
21 normal rates.

22 So with that said, on that paragraph below; and then it
23 has the employee retiring, years of service. That outlined
24 the promise.

25 Q Okay. And what was the date of this letter?

1 A I'm sorry, it was May 13th, 1998.

2 Q And on or about May 13th, 1998, did you see this
3 letter?

4 A No, ma'am, I didn't see it. I think I had heard about
5 it what was going on first. One of my assistant chiefs came
6 in sometime later into the office. And Chief Baxley and
7 myself were actually in the office. And said you might want
8 to keep one of these. And I looked at, but I had already
9 heard about the plan.

10 Q So keep one of these, he handed you a copy of what we
11 have marked ---

12 A Yes, ma'am.

13 Q --- as Plaintiff's Exhibit 1? And on this Plaintiff's
14 Exhibit 1 it doesn't only deal with employees who have
15 worked 30 years, that the City would pay 100 percent; it is
16 sort of a scaled version; isn't it ---

17 A Yes, ma'am.

18 Q --- if you worked? And what is the scale; what it is
19 on that chart?

20 A Fifteen-year employee would pay 50 percent of the -- of
21 their share, and the City would pay the rest. A 20-year
22 employee would pay 33.4 percent, and the City would pay 66.6
23 percent. A 25-year employee would pay 16.8 percent, and the
24 City share would be 83.2 percent. And 30-year people like
25 myself would be zero percent, and the City would pay 100

1 percent of that share.

2 Q And did this letter reflect what you had heard the
3 mayor tell you and tell other people at meetings that he
4 wanted to do?

5 A Yes, ma'am.

6 Q After May of 1998 did the mayor again repeat this
7 promise to you or was it repeated to your employees?

8 A It was to my employees during luncheons. I would
9 occasionally hears somebody on City Council even at Council
10 meetings particularly around times of when they were
11 introducing new employees there would generally be some
12 member of City Council that would say, yeah, y'all got a
13 good deal, look what you have got, you have got something
14 that not everybody else has. The -- my dealings with Mr.
15 Anderson, he and I had talked about how great -- it was a
16 great plan.

17 Q And what was Mr. Anderson's position at the City?

18 A Mr. Anderson was the mayor's special assistant. He's
19 seated at the table behind you.

20 Q Okay. And did you have any understanding of why the
21 mayor wanted to give retirees this benefit of paying for
22 their insurance down the road?

23 A Any understanding of why ---

24 Q What was -- yes, do you know why the mayor wanted to do
25 this; did he tell you why he was doing this?

1 A I know that at meetings and things he said that he
2 wanted to help the employees. He often talks -- talked
3 about then and talks about now, the quality of life issues.
4 And we certainly agreed with him.

5 And but he constantly would say that he wanted to make
6 sure the quality of life for his employees was good. And it
7 states in there, it says on the bottom of that, it says
8 thank you and I hope you are all inspired to support this
9 proposal to provide the peace of mind to those who retire
10 from at least 15 years of dedication and devotion to the
11 service of the City.

12 Q Okay. Besides being this promise to the retirees being
13 discussed at city meetings and besides the mayor's
14 assistant, Ray Anderson, training to you about it, did you
15 have any discussions with anyone at the City HR Department
16 about the retiree payment of insurance?

17 A Yes, ma'am, I have. Mr. Bob Connella, he was the
18 personnel director. And Bob and I are fishing friends. Not
19 only fishing friends; but, you know, we communicated on a
20 daily basis when we were at work.

21 But I know that he talked about the program. He had
22 told me before one day, going fishing as a matter fact, we
23 were going down the road and we got to talking about the
24 upcoming budget. And he says, you know, I don't know how we
25 are going to continue to do this.

1 And I said, what, Bob.

2 He said, well, this plan, you know, the City, you know,
3 in the City we don't have that many retirees. He said, and
4 this is going to continue to go up, the number of retirees
5 and the cost of insurance is just going to continue to rise.
6 He said, I have been telling them and I have been telling
7 them.

8 I said, wait, a minute, Bob; are you telling me I am
9 not going to have no retirement plan.

10 No, no, no, that is not what I am telling you. That is
11 not what I am telling you.

12 I said -- he said that eventually it is going to go up
13 and the City is going to have to stop it. And he said that
14 it is just going to continue on.

15 And I said, well, what is going to happen to the
16 retirees, the people that retire.

17 He said, oh, they are going to be grandfathered; the
18 City ain't going to do nothing like that; y'all are going to
19 be grandfathered if you retire; but those people that are
20 there are going to have to make a decision to retire when
21 that occurred, retire or do without.

22 You know, the -- spoke with Council members.
23 Councilman Bob King is a person that didn't call me very
24 often in my office, but when he did call me he usually had a
25 question about the -- something going on in the budget or

1 something of that nature.

2 And but he would call me and -- as fire chief it was my
3 job to make sure that the people knew what was going on. We
4 had a bad turnover rate. Prior to 1998 we lost a lot of
5 older people and younger people.

6 But he would call me and he would say, Chief -- after
7 this was implemented he would call me and say, Chief, are
8 you telling those people what they have got, what they are
9 getting ready to lose; tell those people that don't know,
10 now, look what they have got, they have got free insurance
11 for the rest of their life. And he would stand up and say
12 usually there is nobody else around this area that has that,
13 now you make sure you tell them.

14 I could pretty well count on Mr. King at any
15 conversation he is going to tell me that.

16 Q And why did you have that high turnover rate?

17 A It was really several reasons. Number one, the City of
18 North Charleston by average we were a very large department.
19 We had a very high response rate. We were responsible for
20 covering not only the residents and communities and
21 commercial establishments and factories, but we also had a
22 major interstate highway go through there. We had a State
23 Ports facility. And we had an International Airport. So we
24 had a lot of calls.

25 We trained a lot. We were constantly training, as a

1 matter of fact. And we had a tremendous responsibility. We
2 had to be ready.

3 But not only that -- well, I guess what I am trying to
4 say, it wasn't only that our department was paid anywhere
5 from two to four thousand dollars less ---

6 Q Less than who?

7 A Starting salaries. Other departments in the area I
8 think we were \$2,000 less than average with Charleston. Mt.
9 Pleasant we were less than them. City of Columbia we were
10 less than them.

11 Q And how do you know that ---

12 MR. CONLEY: Your Honor -- Your Honor, I have an
13 objection to his testimony about what they were less than in
14 terms of salaries.

15 There has been -- there has been no foundation laid for
16 how he would have that knowledge, how he has gained that
17 knowledge.

18 THE COURT: All right. I will sustain the objection.

19 MR. CONLEY: Okay.

20 THE COURT: If she will lay the proper foundation of
21 how ---

22 MS. BLOODGOOD: I was just getting ready to do that.

23 THE COURT: How he knows that.

24 MS. BLOODGOOD: Your Honor ---

25 THE COURT: Next time do it before you ask the

1 question.
2 MS. BLOODGOOD: Okay.
3 Q I am going to hand you a document. It is not an
4 exhibit. But ---
5 A Right.
6 Q --- this may refresh your memory as to how you knew
7 what the various salaries were in different places.
8 What ---
9 MR. CONLEY: Judge ---
10 Q What did you do to determine what ---
11 MR. CONLEY: Objection, Your Honor.
12 THE COURT: What is your legal objection?
13 MR. CONLEY: The legal objection is that she said she
14 is using that to refresh his recollection. He hasn't even
15 stated that that is a document he prepared. In order ---
16 THE COURT: Do you have a legal objection?
17 MR. CONLEY: Yes, the legal objection is there has been
18 no foundation ---
19 THE COURT: Overruled. They are not offering it into
20 evidence. She just gave it to him to review. Okay.
21 Overruled. Go ahead.
22 THE WITNESS: Thank you, Your Honor.
23 Q Chief Rissanen, you testified earlier that you thought
24 that North Charleston was being paid less than other
25 municipalities in the area. Did you do anything to

1 determine that that was the case?

2 A Yes, ma'am.

3 Q Okay. And what is the document that I have just handed
4 to you?

5 A These documents are copies of sheets from the South
6 Carolina State Fireman's Association statistician's report.
7 They are handed out each year at the end of our Firefighter
8 Association's convention.

9 Q Okay.

10 A The departments keep them. All firemen like to know
11 who else is making how much more or less. And as well as
12 the number of hours worked, how many trucks they have, how
13 many responses ---

14 MR. CONLEY: Your Honor ---

15 A --- they go to.

16 MR. CONLEY: I have the same objection. I know they
17 haven't introduced this into evidence. But he is basically
18 reading. He is testified about what is in this document.
19 And there has been ---

20 THE COURT: He was testifying what the document was.

21 MR. CONLEY: It's ---

22 THE COURT: Overruled.

23 MR. CONLEY: It's ---

24 THE COURT: Go ahead.

25 Q After you -- and you would have seen these documents

1 year-to-year; is that correct?

2 A I'm sorry, ma'am?

3 Q You would see statistician reports ---

4 A Yes, ma'am.

5 Q --- that were provided to you by the State about
6 compensation from year-to-year?

7 A Yes, ma'am.

8 Q And so as a result of reviewing these documents, such
9 as the one that I handed to you, what was your impression of
10 how North Charleston firefighters were paid in relationship
11 to someone like the City of Charleston or the County of
12 Charleston or the City of Columbia?

13 A First, if I can -- go say something first. First of
14 all, we didn't need this information to show that. Our
15 firefighter you have got telephone, telegraph, tell a
16 firefighter. Most firefighters know what the other
17 departments are making.

18 I used this information when I would get it,
19 particularly around budget time I know that at least on one
20 occasion I gave Mr. Anderson a copy of this prior to budget.

21 I think he had asked me what we were going to do for
22 the budget, what we were asking for. And I had been telling
23 him in the past that Mr. A, we are making less than these
24 people. And I gave him a copy of it to show him one day.

25 Q Okay.

1 A Which year it was -- this is only a copy of 1998 and I
2 think 2002. I got these from the state association. I
3 called them up and I asked for the -- actually 1998 and the
4 2005 when I retired. Without -- they sent me the '98. But
5 she said the only thing she had else was copies was the two
6 thousand ---

7 Q As fire chief were you familiar with the turnover rate
8 prior to 1998 when Mayor Summey became mayor?

9 A Yes, ma'am.

10 Q And were you familiar with the turnover rate after
11 Mayor Summey instituted his program in 1998 for the
12 retirees?

13 A Yes, ma'am. And the -- it changed as far as who we
14 were losing. When -- prior to all the promise we were
15 losing people of different ranks. We lost a battalion chief
16 to I think went to State Ports. We lost another battalion
17 chief that went to Westvaco. We were losing captains and
18 engineers to other departments like Mt. Pleasant and places
19 like that.

20 After this came on board, or the promise came on board,
21 we were just using losing the younger guys, the people that
22 didn't have much time in service.

23 Might have had a young family, they weren't thinking
24 about the excellent benefit it was. So they were looking at
25 that \$2,000 difference or that \$3,000 difference. And those

1 were the ones we were losing.

2 Q You were keeping your experienced firefighters, the
3 ones with 15, 20 years?

4 A Yes, ma'am. It was refreshing to hear a captain
5 actually talking to his engine company saying look what you
6 have got, guys; look what you've got; you are not -- you
7 know, this is great; you are going to have this when you
8 retire.

9 Q As fire chief was that the captain's job to tell the --
10 tell the employees what their -- what they were going to get
11 when they retired?

12 A Yes, ma'am, as well as the captain in my job.

13 Q Besides Councilman Bob King were there any other
14 council -- City Council members who talked to you about the
15 retirement benefits for the firefighters?

16 A Yes, ma'am. After we got -- received a letter that
17 stated that we weren't going to ---

18 Q Okay, so let me show you that letter before you
19 start ---

20 A Okay. I am sorry.

21 Q --- talking about it. That's okay. I just think it
22 will be easier. I am going to show you what we have marked
23 as Plaintiff Exhibit 2.

24 A Yes, ma'am.

25 Q Tell me what that letter is, please.

1 A It is a letter from the Mayor Keith Summey to all
2 retirees for the City of North Charleston dated May 4th,
3 2009.

4 Q Okay. And ---

5 A And ---

6 Q --- you were going to say -- what is it in this letter.
7 Tell me what is in this letter.

8 A The part that strikes me is it says: As it relates to
9 retiree healthcare benefits we are requiring employees
10 retiring as of or after July 1st, 2009, to meet new
11 eligibility provisions and pay increased shared cost.
12 Retirees in the plan prior to June 30th, 2009, will enjoy
13 the existing benefits except for one major change; once a
14 retiree becomes eligible for Medicare all healthcare
15 benefits provided by the City of North Charleston will
16 cease. This change will become effective June 30th of 2010.
17 If you should have any question -- so and so forth.

18 Q Okay. At the time you received this letter in 2009
19 were you retired?

20 A Yes, ma'am. I had been retired right around four
21 years.

22 Q And you were not 65 yet, correct?

23 A No, ma'am.

24 Q So when you received this letter what was your
25 understanding of how it was going to affect you personally?

1 A My understanding of that when I turned 65 my wife would
2 not have insurance through the City any longer and we would
3 have to find insurance for her.

4 Q And would the City pay your supplement when you turned
5 65?

6 A It is also that that would be cut down.

7 Q Because it says benefits will cease, ---

8 A Yes, ma'am.

9 Q --- all benefits? Okay. Now what did you do after you
10 received this letter? I think you were going to tell me
11 that before. In terms of talking to any Council members.

12 A Yes, ma'am. I had -- you know, certainly a lot of
13 people were upset. I went to Pepperhill Ballpark where
14 Councilwoman Rhonda Jerome worked during the ball season.
15 And she was outside in the parking lot talking to a police
16 officer who was on crutches as a matter of fact at the time.

17 And I kind of interrupted her. And I asked her. I
18 said, Mr. Rhonda, why weren't retirees grandfathered. And
19 she looked at me and she said, well, I thought they were.

20 And I said, no, ma'am, we weren't grandfathered; is
21 that something y'all voted on or what.

22 She said, I thought y'all were grandfathered.

23 I said, no, ma'am; I mean did Council vote on it.

24 And she says, well, I don't remember; but I thought
25 y'all were grandfathered. And I said would you mind

1 checking on it for me and, you know, give me some
2 information.

3 Rhonda and I were friends. And she had my phone
4 number. And she said, all right, I will do that.

5 Approximately two weeks later I went back to the
6 ballpark. She was there behind the concession stand. And I
7 asked her again if she had had the opportunity to check into
8 it. She stated that she hadn't, that she would call me. I
9 never received a phone call for -- from her.

10 Q Okay.

11 A Also there was Councilman Ed Haskell who lives in my
12 neighborhood. He was my city councilman. I saw him on the
13 street actually and waived him down.

14 And I asked him. I said, Ed, why weren't we
15 grandfathered.

16 And he said -- I am trying to remember -- it wasn't in
17 writing, Chief. And he smiled and smirked, and he just
18 shook his head.

19 And I said what wasn't in writing, the plan -- what
20 wasn't in writing, Ed. He said it wasn't in writing, Chief.
21 And he drove off.

22 It is also funny that in 2006 I attended a council
23 meeting. I was attending several council meetings in 2006,
24 as a matter of fact. And but Councilman Bob King after the
25 meeting -- let me back up again.

1 My purpose that day to be at the meeting was my son was
2 a new employee of the City of North Charleston and they had
3 the new employees there to introduce them to City Council.

4 And so I was there of course to, you know, be with my son.

5 And after the meeting Mr. King came down. And I walked
6 up to him and I said, Mr. King, I would like to introduce
7 you to my son. He said fine.

8 And he turned to me and he said -- he pointed at me and
9 he said: Your dad is a fine man. I want you to do the
10 same. I want you to be just like him. Don't be one of
11 these fly-by-nighters. Don't you be one of these fly-by-
12 nighters, you know, where you come here and you work just a
13 little bit and then you leave. You have got to remember,
14 now, you have got the best plan. Don't you, Chief, you
15 agree with it.

16 I said, yes, sir.

17 He said: You know, you have got the best retirement.
18 And not only that we have got -- you are going to have free
19 health insurance for the rest of your life. Ain't that
20 right, Chief. Are you enjoying it.

21 And I said, yes, sir, I am enjoying it.

22 Now after this came out in 2009 I attended one of the
23 Council meetings -- and it might have been even 2010. I
24 walked up to Councilman King as he was leaving after the
25 meeting. And I said, Mr. Councilman, how are you. And he

1 say, I've got to go. Totally different response.

2 Q Prior to the time that you retired -- in 2005, right?

3 A Yes, ma'am.

4 Q Okay. As fire chief were you authorized by the mayor
5 to talk to your chiefs, battalion chiefs, employees, about
6 retiree health insurance?

7 A Yes, ma'am. It was expected of me. It was my
8 position. Not only did Mr. Anderson expect me to do it,
9 from discussions we had Mr. -- during our discussions with
10 Mr. -- with council people like Mr. King the conversation
11 would usually end with are you telling them, are you telling
12 these people.

13 Q Okay.

14 A And generally I guess they wanted to put the fault on
15 me sometimes. But -- not Mr. Anderson. He wouldn't do that
16 to me.

17 Q And why did they want -- why was it so important
18 that ---

19 A They couldn't understand the turnover rate. We had
20 days when we were shutting engine -- aerial trucks down we
21 were so short. And we had three aerial trucks in the City
22 and we might have one man on one of them.

23 Q And so when you would -- how did you go about
24 explaining or communicating the mayor's promise to retirees,
25 from a practical standpoint what did you do at day-to-day to

1 communicate this promise?

2 A Generally when I visited stations if somebody was upset
3 I would repeat the promise. Sometimes when you are sitting
4 around visiting stations or what have you. It was a good
5 point. It made people happy.

6 Q Okay.

7 A It was quite a -- quite a benefit. And there were
8 other issues certainly talked about.

9 Q Okay.

10 A But it was -- and not only that, I instructed my people
11 to do it also. Chief Baxley had been informed by someone
12 from the City, as a matter of fact, that -- Chief Baxley was
13 my chief personnel officer. He was responsible for all of
14 the pre-hires and hiring and what have you.

15 And he came to me and told me that somebody from the
16 City had said you needed to put a document together that
17 when he pre-interviewed the people that he covered all of
18 the points of all of the benefits and pay and salary and all
19 the rest of that stuff.

20 And Chief -- of course I told him, said get it done.
21 And he went and put up a document that had this program
22 included in it to discuss it with pre-hires.

23 At the end of that, all of the people that went
24 through, there was a check-off sheet, they -- that had been
25 discussed with them. And that would sign off on it.

1 And to my knowledge that last account I think we had of
2 it, that little document, should have been in the personnel
3 files in the Navy Base fire station safe or vault possibly.
4 Chief Baxley would know more about that than I would.

5 Q Okay. Chief Rissanen, between 1998 when this promise
6 was made and 2005 when you retired, did you believe that the
7 mayor was going to fulfill the promise?

8 A Yes, ma'am. I had no reason to not know that. I am
9 standing -- sitting here in front of a man that I feel is a
10 personal friend. He had to my knowledge never lied to me.

11 As a matter of fact prior to his election he and I sat
12 in the Howell House on Dorchester Road and he told me every
13 plan that he was going to do with the City. And he brought
14 them all true.

15 I had absolutely no reason to believe that he wouldn't
16 do it. And I think that was very well the same -- to say
17 the same thing for Mr. Anderson. Because as my step-up, my
18 boss to go to, at the times we discussed it I had no reason
19 to believe that it wouldn't happen.

20 Q Okay. And did you rely on the mayor's promise?

21 A Yes, ma'am, I did. My plan was to really work forty
22 years. At forty years I could have maxed out -- nearly
23 maxed out my retirement. I -- my wife had diabetes. I knew
24 I needed the insurance.

25 If I would have realized or understood that it might

1 not be a doable promise then I would have -- I mean I was in
2 good standing.

3 Mr. Anderson did my performance evaluation reports. I
4 don't think he ever disciplined me. I had nothing but good
5 reviews. I was thought real well of. I think -- at least I
6 hope I was. I felt my job was secure. But that benefit
7 was -- was tremendous.

8 Q Well, why did you decide that you could retire after 35
9 years instead of 40?

10 A Yes, ma'am, I had, as I mentioned before, I was friends
11 with Bob Connella, the personnel director. And I think it
12 was Chief Kenny Bray or it might have been somebody from the
13 Police Department came up and they asked me if I have gone
14 to see Ms. Debbie Bush who was Mr. Connella's assistant to
15 see what I would be making at retirement if I retired now or
16 then.

17 And I said, well, you know, I will look at it. Because
18 I didn't think I could afford it. I went up and spoke to
19 her. And she gave me some pretty impressive figures.

20 And of course she threw in there, remember, you have
21 got the insurance plan here too, that is going to be a
22 benefit. I said, yes, ma'am, that is great.

23 So I was -- went back up to personnel just a couple of
24 days after that and I spoke with Mr. Connella. And I said,
25 you know, Bob I am trying to make a decision and I would

1 like -- my plan was to stay 40 years. Said but, you know,
2 Debbie gave me some good information. With what I was
3 making with my retirement and with the healthcare insurance
4 said that I could leave now.

5 And he said you might want to go sooner than later.
6 And I said why. And he said, oh, you just might want to go
7 sooner than later.

8 I said, Bob, what are you not telling me. And he said,
9 well, you just need to think about it. You need -- you
10 probably want to go sooner than later.

11 I said, Bob, what are you not telling me. He says,
12 well, I have been telling you insurance costs are going up
13 and up and up and up. And the City is not going to be able
14 to handle it all, thus eventually they are going to have to
15 cut that program out.

16 I said, oh, now you are going to tell me I am not
17 having insurance? You have done told me this before. And
18 he said, no, no, no, the City will grandfather all retirees
19 and that you -- your -- y'all -- the City would do that to
20 y'all.

21 He said that is why I am telling you retire now or as
22 soon as you can. I am not telling you it is going to be
23 this budget. I am not telling you it is going to be the
24 next budget. But eventually it is going to happen, and if
25 you can retire now that is best for you to do.

1 Q Okay. After you retired in two thousand- -- in 2005
2 did you get free health insurance for you and just pay for
3 your dependents until you were age 65?

4 A Until I aged -- until I turned 65, yes, ma'am.

5 Q And what insurance does your wife have now?

6 A She is on COBRA right now with the City of North
7 Charleston.

8 Q Okay. And when her COBRA runs out what insurance will
9 she have?

10 A When COBRA runs out she won't have insurance. We'll --
11 I mean we have looked at Obama Care and things of that
12 nature. And it scares me.

13 Q How long will it be before she will turn 65 and be
14 eligible to be on Medicare?

15 A She has got three years of COBRA. So that is, what,
16 five years and two months.

17 Q So she will be without insurance for five years ---

18 A Yes, ma'am.

19 Q --- and two months?

20 MR. CONLEY: Object to the form, Your Honor. He can't
21 testify as to whether she will be without insurance or not
22 for the next five years.

23 THE COURT: Well, she will be without COBRA, okay.

24 MR. CONLEY: Correct.

25 THE COURT: Okay. All right. Whether she gets it or

1 not, I understand.

2 MR. CONLEY: I understand, but ---

3 THE COURT: I will sustain ---

4 MR. CONLEY: --- she won't have insurance.

5 THE COURT: --- the objection from that standpoint.

6 Q Did -- Chief Rissanen, after you got this letter that
7 we marked as Plaintiff's 2 from the mayor saying that there
8 were two parts of the promise that he made were not going to
9 be fulfilled did you have any conversations with anyone at
10 the City about your situation being grandfathered or did you
11 talk to anyone about it?

12 A Yes, ma'am. It was several days -- I don't recall the
13 date that I got the letter. But it was several days after
14 that there was a meeting at North Charleston City Hall and
15 in Council chambers. And Council chambers was pretty well
16 packed with retirees and also some of the longer or older
17 City employees.

18 And basically discussed the content of this letter. As
19 a matter of fact, I don't recall the mayor being there. I
20 remember Chris Ruth being there and Warren Newton. But I
21 don't remember the mayor being there.

22 Q And who is Chris Ruth?

23 A Chris Ruth is the HR director.

24 Q And who was Warren Newton?

25 A Warren Newton is the finance director at the City of

1 North Charleston.

2 Q Okay.

3 A After -- I'm sorry.

4 Q Go ahead.

5 A After they had their say I walked up to Warren and I
6 asked him; I said Warren, you know, my wife is nine years -
7 nine years - I had to do the math. Nine years my junior.
8 And I said, does this mean she is not going to have health
9 insurance after I turn 65. And he says, that is right,
10 Chief; she is going to have to find insurance somewhere
11 else. I said, well, I have been retired four years; what
12 about -- we aren't grandfathered.

13 He says, Chief, I can't tell you why you aren't
14 grandfathered.

15 Q Okay. And did you ever have a discussion with the
16 mayor about your situation?

17 A It was the last part of 2011. Chief Judge, Chief
18 Baxley -- the Chief Judge was the former fire chief. He
19 took over some time after I left. And Chief Baxley and
20 myself.

21 I think Chief Baxley asked for a meeting with the --
22 through the mayor folks to have a meeting with the mayor and
23 discuss our problem.

24 Because all three of us had younger wives. And each
25 one of us would have that very same problem.

1 We met with the mayor at City Hall. And I think it was
2 the mayor. I think it Julie Elmore, Warren Newton the
3 finance director, and Chris -- Ms. Christine Ruth, the
4 personnel or HR director.

5 And we told them, basically, Mr. Mayor, we have got a
6 problem that, you know, we have got younger wives, that when
7 we turn 65 they are not going to have any insurance.

8 And the mayor listened, and he said -- he looked and
9 turned to Ms. Chris Ruth; and said, you know, I understand
10 what these fellows are saying, let's see what we can do to
11 help them. I don't recall what else was discussed at the
12 time.

13 But anyway, probably months after that I received a
14 letter. And I know you are going to hand me one.

15 Q I am going to back you up a little bit. I am going to
16 show you a document we have marked as Plaintiff's Exhibit 3
17 which is an email exchange. What is the date on that?

18 A Oh, yes, ma'am.

19 Q What is the date on that email?

20 A It says in Tuesday, June 21st, 2011.

21 Q Okay. And are you familiar with that email chain?

22 Tell me what it is if you would. Would you describe --
23 describe what that email is about and who it is to and from.

24 A It says an email from Ed Astle to Chris Ruth. Do you
25 want me to read the whole thing here?

1 Q No. No. Just tell me in general -- and flip to the
2 second page if you want because that is ---

3 A Right.

4 Q --- the response.

5 A The second I recognize too. It is the -- I had asked
6 Mr. Ed Astle, Councilman Ed Astle, why the rates were going
7 so high year to year. I had been following the media and it
8 had been saying about the rate increases and they were going
9 anywhere from -- or reporting eight to nine percent
10 increases.

11 And the year that we got this the increase just seemed
12 to be extra high. And I asked Councilman Ed Astle if he
13 would check to find out what was going on. There were some
14 other things too. But this is the response that I got back
15 from him.

16 And I know one thing that really hit, it says in the
17 middle of the second paragraph it says: For example, as a
18 retiree with 35 years of service you do not pay anything for
19 your coverage because you are grandfathered and retired
20 prior to July of 2009 when it changed.

21 And grandfathered? I am like everybody told us we
22 weren't grandfathered.

23 Q Well, Bob Connella told you you were grandfathered?

24 A We would be grandfathered.

25 Q And he was the HR director, correct?

- 1 A Pardon me, ma'am?
- 2 Q He was the HR director?
- 3 A Yes, ma'am, he was.
- 4 Q And, Chief Rissanen, this email is from Chris Ruth; and
5 then she was an HR director, ---
- 6 A Yes, ma'am.
- 7 Q --- correct?
- 8 A Yes, ma'am.
- 9 Q So you are hearing from part of the City that you are
10 grandfathered as late as 2011?
- 11 A Yes, ma'am.
- 12 Q And what did you do after you got this email?
- 13 A I don't really remember. I know that -- like I said,
14 it wasn't long -- or sometime after that we met with the
15 mayor. I don't remember how many months or what have you.
16 But I was talking to more people. I was finding out
17 what was going on. It didn't seem right.
- 18 Q And Chief Rissanen, at this point you had not yet
19 turned 65; correct?
- 20 A No, ma'am.
- 21 Q So your wife was still covered on the City's policy?
- 22 A Yes, ma'am, she was.
- 23 Q You were just -- did you look into how much it would
24 cost you to get insurance for her?
- 25 A Yes, ma'am. She called Blue Cross Blue Shield. And of

1 course they said that she couldn't be ---

2 MR. CONLEY: Object to the form, Your Honor. This is
3 clearly hearsay as to what Blue Cross and Blue Shield told
4 anybody, what they quoted him in rates or ---

5 THE COURT: I will sustain the objection.

6 Q Don't tell me what somebody else told you. But what
7 was your understanding of whether or not she could get
8 healthcare easily?

9 A We went -- or she went online and was looking at
10 different places. One thing that -- and she spoke to
11 different companies. The understanding we had, that if she
12 was able to get ---

13 MR. CONLEY: Your Honor, this is still hearsay. He is
14 effectively testifying about what Blue Cross and Blue Shield
15 or some other unknown insurance carrier told him or
16 conveyed -- more importantly conveyed to his wife.

17 THE COURT: I haven't -- ask him some specific
18 questions ---

19 MS. BLOODGOOD: Okay.

20 THE COURT: --- if you would, please, ma'am.

21 Q Do you know whether or not your wife looked into
22 getting insurance outside of the City's policy?

23 A Yes, ma'am.

24 Q And do you know whether or not the pre-existing -- her
25 pre-existing condition was a problem?

1 A Yes, ma'am, it was.

2 Q And due to her pre-existing condition how -- why was it
3 a problem?

4 A Because she had a -- she had diabetes.

5 MR. CONLEY: Objection, Your Honor. He is still ---

6 THE COURT: Overruled. He is just saying why the pre-
7 existing exists. He knows that.

8 Go ahead.

9 Q Right. Let me show you -- you said that you had a
10 meeting with people from the City in late 2011 or in two
11 thousand- -- late 2011?

12 A With the mayor and chief officers, yes, ma'am.

13 Q Okay. And as a result of that meeting what did the
14 mayor tell you that he would do?

15 A He told us that -- he told us he was going to look into
16 it and have Ms. Christine Ruth look into it.

17 Q All right. Now let me show you an Exhibit that we have
18 marked as Plaintiff's Exhibit 4. Can you tell me what that
19 is?

20 A Yes, ma'am. This is a letter from the City of North
21 Charleston Human Resources Department from Christine Ruth,
22 the director of such, to me. And it was dated May 11th,
23 2012.

24 And this is about a meeting she had scheduled with a
25 Mr. Kay from I think Southern Benefits, which is I guess an

1 insurance handler or insurance company.

2 And that sets the date for us to meet. And my
3 understanding I think Chief Baxley and Chief Judge also got
4 a copy. Whether or not other people in the City had gotten
5 it, I don't know.

6 Q Okay. But it is signed by Chris Ruth who is the human
7 resource director, correct?

8 A Yes, ma'am.

9 Q And in the first paragraph, would you read the first
10 paragraph.

11 A Last year? Beginning with last year?

12 Q Yes.

13 A Last year we met with you to discuss your concerns
14 regarding the increased premiums for dependent healthcare
15 coverage. At that meeting we were asked to look for an
16 alternative healthcare plan for your dependents.

17 Q Who asked Chris Ruth to look for an alternative
18 healthcare plan for your -- for your dependents?

19 A Mayor Summey asked -- turned to Chris Ruth at that
20 meeting and asked her to look into something for us.

21 Q Was it your understanding when you had that meeting in
22 2011 with Mayor Summey that there was going to be an attempt
23 to help your situation?

24 A That was our understanding.

25 Q Did you ever meet with Mr. Kay from Southern Benefits?

1 A Yes, ma'am. It was -- I remember it was a morning
2 meeting. Let me see. Ten o'clock. And Chief Judge,
3 myself, and Chief Baxley went to I think it was the top
4 floor of City Hall. And the only people that were there was
5 Mr. Kay and Ms. Ruth.

6 And he started going over ---

7 Q Okay, and I don't want you to tell me what he is
8 saying. But as a result of that meeting, did he -- did he
9 provide you any viable options for insurance for your wife?

10 A No, ma'am.

11 Q Now each year do you receive retirement information,
12 different sheets from the City, to tell you how much your
13 dependent coverage is going to cost?

14 A Yes, ma'am.

15 Q Okay. Let me show you what we have marked as
16 Plaintiff's Exhibit 5. Can you flip through that and tell
17 me what that document is.

18 A It says City of North Charleston retiree election form,
19 health benefit coverage.

20 Q And what it is -- what does it say?

21 A Well, it says -- it has got a place for my name. And
22 it says election for retiree health benefit coverage. It
23 has the rates per year on there and what each of the
24 individuals would pay.

25 And then it says I understand and agree that. And it

1 says initial all. And then it has different area there that
2 we are supposed to initial after we have read.

3 And then there is a second section that says waiver of
4 health benefit coverage, initial only if needing.

5 And then a place for our signatures.

6 Q Okay. Did it come with a cover letter?

7 A Yes, ma'am, it did.

8 Q And do you recall what the cover letter stated?

9 A I remember that it said -- one part of it says to --
10 you are required to complete, sign, and return.

11 Q Okay. Well, now, the first page of Exhibit 5 it --
12 on -- it talks about rates expiring 6/30/09, correct?

13 A I'm sorry, ma'am?

14 Q The date on the first page is June 30, 2009?

15 A Yes, ma'am.

16 Q And you signed it ---

17 A Yes, ma'am.

18 Q --- on June 26, 2009?

19 A Yes, ma'am.

20 Q Would you turn to the second page.

21 A Yes, ma'am.

22 Q Up on the top, that is the sheet for July 2010?

23 A Yes, ma'am.

24 Q Third sheet is the sheet for July 2011, is that
25 correct?

1 A Yes, ma'am.

2 Q Okay. The fourth sheet is for 2012?

3 A Yes, ma'am.

4 Q And the last sheet is for 2013, correct?

5 A That is correct.

6 Q Now in 2010 and 2011 and even in 2012 you have just

7 testified you were still talking to the City to try to

8 get -- to understand what was going on?

9 A Yes, ma'am.

10 Q And you were stilling having meetings and the mayor was

11 trying to find an alternative to help you?

12 A That was my understanding, yes, ma'am.

13 Q If you look on the second page on the sheet that's

14 provided by the City of North Charleston for the July 1st,

15 2010, the fourth block down, could you read that sentence.

16 A It says coverage with the City of North Charleston will

17 end when I and/or my dependent become eligible for Medicare

18 benefits.

19 Q That means that coverage ends when your wife becomes

20 eligible at age 65, ---

21 A Yes, ma'am.

22 Q --- correct?

23 A Yes, ma'am.

24 Q Did you point that out to the HR Department that it was

25 conflicting with what they had said previously?

1 A Chief Baxley did. He, as a matter of fact, he brought
2 it up again in to that -- in that meeting with the mayor and
3 them around.

4 Q Okay. And you heard him bring that up?

5 A Yes, ma'am, he did.

6 Q And then if you go to 2011 that same City of North
7 Charleston retiree election form on the fourth box, does it
8 still say that coverage with the City of North Charleston
9 will end when I and/or my dependent become eligible for
10 Medicare benefits?

11 A Yes, ma'am.

12 Q And then in 2012, if you will turn the page, what does
13 the fourth box say now?

14 A It says coverage with the City of North Charleston will
15 end when either I and/or my dependents become eligible for
16 Medicare benefits. If I become eligible for Medicare
17 benefits before my dependents I understand that my dependent
18 or dependents will receive a COBRA notice and are no longer
19 eligible for dependent coverage.

20 Q Okay. And the first time that language appears is in
21 July of 2012?

22 A Yes, ma'am.

23 Q Three years after the mayor's letter to you telling you
24 what was going on?

25 A Yes, ma'am.

1 Q Now are you currently paying for a Medicare supplement
2 policy?
3 A Yes, ma'am.
4 Q And when did you start paying for it?
5 A March of 2016.
6 Q Is that when you became 65?
7 A Sixty-six -- well, 65. Yes, ma'am.
8 Q Okay.
9 A Sorry.
10 Q And how much a month are you paying for the Medicare
11 supplement policy?
12 A One-forty-six-forty-five.
13 Q Okay. And have you calculated how much money you have
14 spent since the time -- have you calculated how much
15 money -- would you say the amount again. How much are you
16 paying?
17 A One-forty-six-forty-five.
18 Q One-forty-six-forty-five. And have you calculated how
19 much total you have paid for a Medicare supplement policy
20 until today?
21 A Yes, ma'am. I just paid the November of this year.
22 And that comes out to \$3,075.
23 Q And have they -- while you have been getting that
24 Medicare supplement policy has the price increased at all?
25 A Not yet.

1 Q Okay. Do you have any insurance policy lined up for
2 your wife when her COBRA ends?

3 A We are -- we actually went to our insurance agent. And
4 he referred us back to was it Government -- dot gov -- dot
5 com -- whatever it is.

6 MR. CONLEY: Your Honor ---

7 A Dot care dot com.

8 MR. CONLEY: Interjecting hearsay testimony. He is
9 talking about what other people said.

10 THE COURT: Go ahead.

11 Q You can't -- you can't tell me what someone else said.

12 A I'm sorry.

13 Q So my question was have you -- or do you know
14 approximately how much it would cost you to cover your wife
15 per year of health insurance when her COBRA ends?

16 A Approximately \$400 more than what we are paying now.

17 Q Right.

18 A That would be close to a thousand dollars.

19 Q Okay. And that is a thousand dollars a month?

20 A Yes, ma'am.

21 Q Until she is 65?

22 A Yes, ma'am. And that also depends ---

23 THE COURT: Objection, Your Honor.

24 A --- on which one ---

25 MR. CONLEY: There is no foundation for his knowledge

1 about how long that cost would exist, what that cost is.
2 There is zero foundation for this \$400 number.
3 And there is zero -- there is no foundation for him
4 then extrapolating that into something as to what is going
5 to pay for this -- for her until she reached age 65.
6 MS. BLOODGOOD: I will clarify the question.
7 THE COURT: Okay. Go ahead.
8 Q When your wife reaches the age of 65 she is eligible
9 for Medicare, right?
10 A Yes, ma'am.
11 Q In fact, she has to go on Medicare at 65?
12 A Yes, ma'am.
13 Q And it becomes her primary insurance, correct?
14 A Yes, ma'am.
15 Q And I am not asking you about what a supplement would
16 cost for her, because you don't know that. But you have
17 looked into how much it is going to cost you out of pocket
18 to get her to age 65 ---
19 A Yes, ma'am.
20 Q --- if she -- once she goes off of COBRA, correct?
21 A Yes, ma'am.
22 Q And that is the thousand dollars a month?
23 A Yes, ma'am.
24 Q Okay. Thank you. I don't have any other questions.
25 MR. CONLEY: Your Honor, I have the same objection to

1 that testimony. There is no foundation for his knowledge as
2 to what it is going to cost.

3 He has not been established as an expert in healthcare
4 cost who can extrapolate that kind of information going
5 forward. It ---

6 THE COURT: Overruled. Thank you.

7 Cross-examination -- are you finished?

8 MS. BLOODGOOD: Yes, I am, Your Honor.

9 THE COURT: Cross-examination.

10 MS. BLOODGOOD: Stay there and answer Mr. Conley's
11 questions. Mr. Conley is going to ask you questions.

12 THE WITNESS: Thank you.

13 **CROSS-EXAMINATION BY MR. CONLEY OF CHIEF ALVAR RISSANEN:**

14 Q Chief Rissanen, good morning.

15 A Good morning, sir.

16 Q Or actually, my apologies. It is afternoon. Chief,
17 how many years were you the chief of the Fire Department?

18 A How many years was -- did I serve the Fire Department,
19 35.

20 Q I mean how many years did you serve as the chief?

21 A About around 13 years.

22 Q Okay. And during that 13 years you knew the City had
23 ordinances, correct?

24 A Yes, sir.

25 Q You knew the City has policies, correct?

1 A Where policy -- we made our own department policy and
2 things like that.

3 Q Sure. And you knew there were other policies within
4 the City, correct?

5 A Yes, ma'am.

6 Q Not just the Fire Department policies, but you knew the
7 City had policies citywide; correct?

8 A Yes, ma'am.

9 Q You had access to those ordinances that existed while
10 you were the fire chief, correct?

11 A Yes, sir.

12 Q You had access to those ordinances even before you were
13 the fire chief such as when you might have been an assistant
14 chief or a battalion chief, correct?

15 A Yes, ma'am.

16 Q Meaning you could have gone and looked at a city
17 ordinance anytime you wanted to, correct?

18 A Yes, sir.

19 Q And you knew how to do that, correct?

20 A Yes, sir.

21 MS. BLOODGOOD: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 Q Chief Rissanen, I am going to ask you to look at what
24 has been marked as Defendant's Exhibit 3 which is the -- an
25 ordinance from 1984.

1 Chief, if you want a minute to look at it; and then
2 I've got a few questions for you about it.

3 A Yes, sir.

4 (WHEREUPON, pause for witness to review exhibit.)

5 A All right, sir.

6 Q Have you ever seen that ordinance before, Chief?

7 A Not that I recall, sir.

8 Q Did you ever -- to your recollection while you were
9 working for the City of North Charleston including while you
10 were as fire chief did you ever see that ordinance?

11 A Not that I recall, sir.

12 Q Did you ever ask anyone at the City to show you an
13 ordinance at any time that applied to retiree benefits?

14 A Not that I recall, sir.

15 Q And you have Defendant's Exhibit 3 in front of you,
16 correct?

17 A Yes, sir.

18 Q Do you have the first page turned towards you, Chief?

19 A I'm sorry, sir?

20 Q Do you have the first page turned towards you? I'm
21 sorry; I know I need to look at you when I am talking so to
22 make sure you can hear me. Do you have the first page?

23 A Yes, sir.

24 Q Do you see first page? Do you see Paragraph C?

25 A "C", sir?

1 Q Yes.

2 A All right, sir.

3 Q Do you see where it says coverage will terminate upon
4 the failure to make required advance payment; do you see
5 that?

6 A Okay, I'm sorry; I've got the other "C". Coverage will
7 be terminated you say, sir?

8 Q Do you see it? I am asking you if you see it.

9 A Yes, sir, I just want to make sure because there are
10 two "C"'s on the page.

11 Q Sure. Do you see where it says -- it goes on to say
12 upon termination of the City's group plan coverage will
13 terminate; do you see that?

14 A All right, sir; I see it.

15 Q Okay. Do you also see in Subparagraph C where it
16 effectively says coverage will terminate upon failure of
17 the retiree to, one, make the required advance required
18 payment; ---

19 A Yes, sir.

20 Q --- two, termination of the City's group plan; or the
21 third thing which says, and you would agree with me, when
22 determined to be in the best interest of the City?

23 A Yes, sir.

24 Q Okay. And you would agree that above Paragraph C,
25 meaning in the prior portion of Section 9.2 of this 1994 --

1 1984 ordinance the ordinance is speaking about retiree
2 access to healthcare benefits, correct?

3 A It appears to be, sir.

4 Q Yet you have never seen that ordinance, correct?

5 A No, sir.

6 Q Never asked anybody the entire time you worked for the
7 City of North Charleston to see any ordinance regarding
8 retiree benefits?

9 A Not that I recall, sir, no.

10 Q Including you never asked to see any ordinance
11 regarding retiree benefits even after beginning in 1998 when
12 you alleged the mayor made these promises, correct?

13 A That is true, sir, because I trusted what the man told
14 me.

15 Q But nevertheless you never asked to look at a city
16 ordinance?

17 A No, sir, I have no reason to..

18 Q You knew the City had a council, right?

19 A Yes, sir. And they told me the same thing.

20 Q Did you -- did you realize City Council passed those
21 ordinances?

22 A I understand mayor and the Council did.

23 Q Sure. And they vote to pass ordinances?

24 A Yes, sir.

25 Q Did you understand that?

1 A Yes, sir.

2 Q Did you ever ask anybody at any time whether there was
3 a city ordinance regarding retiree post-retirement benefits
4 for someone like you?

5 A Not that I recall, sir, because I trusted what they had
6 told me along with City Council repetitively.

7 MR. CONLEY: May I approach?

8 THE COURT: Yes, sir.

9 Q Chief, for purposes of establishing a few things -- and
10 I am not trying to plow old ground with you here, I promise.
11 Okay, so don't feel like I am.

12 Your first position was with what I will refer to as
13 the Public Service District that existed when the City began
14 a municipality, correct?

15 A That is correct.

16 Q So it is true that you were essentially a City employee
17 from what I will refer to as day one of the City existing;
18 it that accurate?

19 A I guess we assumed that at the time, yes, sir.

20 Q From 1972, which I believe you and I would agree or you
21 and I would agree that that is when the City came into
22 existence; from 1972 to 2005 you agree that you never worked
23 for another Fire Department in that time, ---

24 A No, sir.

25 Q --- correct? And from 1972 to 2005 when you retired

1 you would agree with me you never applied for a position at
2 another fire department, correct?

3 A No, sir, never applied.

4 Q You have been pretty clear earlier that you first heard
5 about these paid retiree benefits at luncheons or Tuesday
6 morning breakfasts in 1998; is that accurate?

7 A I think if I am not mistaken, sir, I had -- wasn't sure
8 exactly when or where I heard it.

9 Q Is your first recollection of the hearing anything
10 about those post-retirement benefits in '98?

11 A I know it was around that time. But whether or not it
12 was '98 or -- but it was around the time. I

13 MR. CONLEY: May I approach?

14 THE COURT: Yes, sir. Mr. Conley, you may approach
15 unless I tell you otherwise, okay.

16 MR. CONLEY: That is fine, sir.

17 THE COURT: You don't have to ask me every time.

18 MR. CONLEY: It is sort of old school, Your Honor.

19 THE COURT: I understand.

20 MR. CONLEY: I apologize.

21 THE COURT: I understand. And that is fine. I just
22 wanted to save you the trouble. If I don't want you to
23 approach him I will tell you.

24 Q Chief Rissanen, I am going to hand you or put in front
25 of you what was previously marked as Plaintiff's Exhibit 1.

1 A All right, sir.

2 Q And Ms. Bloodgood asked you about that earlier. So you
3 still recognize it, correct?

4 A I'm sorry, sir?

5 Q You still recognize that document ---

6 A Yes, sir.

7 Q --- that you were asked about a moment ago, right?

8 A Yes, sir.

9 Q Okay. Do you -- is somewhere around the time of you
10 first becoming aware of this May 13th, 1998, memo is that
11 your first recollection of hearing anything about post-
12 retirement healthcare benefits?

13 A That was the mayor or whoever I heard, whether it was
14 Bob Connella or whoever it was was the first time I heard
15 about it.

16 Like I said, I didn't get this memo. I was given a
17 copy of it by Chief Bray I believe it was who came to the
18 office and told us we needed to hold on to one of these.
19 That was some time after that.

20 Q Sir, you would agree with me this memo is not to you,
21 right?

22 A I'm sorry, sir?

23 Q This memo is not written to you?

24 A No, sir.

25 Q It is written to who?

1 A The finance committee.

2 Q And the finance committee refers to who to your
3 knowledge?

4 A Full Council.

5 Q And do you see the first line where it says since I was
6 first elected to the office one of my aspirations, do you
7 see that?

8 A Yes, sir.

9 Q Do you understand what the term aspirations means?

10 A Yes, sir.

11 Q What does that mean to you?

12 A It says wants.

13 Q If you look on down the page, you get to the bottom
14 paragraph. And it says, thank you; I hope you are all
15 inspired to support this proposal to provide peace of mind
16 to those who retire. And then it goes on. Do you see the
17 word proposal?

18 A Yes, sir.

19 Q Do you understand what the word proposal means?

20 A Yes, sir.

21 Q What does the word proposal mean to you?

22 A Suggestive, requested; whatever.

23 Q You would agree with me, wouldn't you, that Plaintiff's
24 Exhibit 1 is not a promise to you; it is -- it is a
25 suggestion and recommendation to the then existing North

1 Charleston City Council?

2 A I would agree that all things that I heard prior to it
3 and after it that this mimicked exactly what was told to us
4 by the mayor, members of City Council, Mr. Anderson, the
5 personnel director, even the finance committee -- finance
6 director as well.

7 Q So in that regard I am asking you about the letter.

8 A Yes, sir.

9 Q This memo.

10 A Yes, sir.

11 Q Would you agree with me that it is a proposal?

12 A It is a proposal according to -- it was written, yes,
13 sir.

14 Q The word promise doesn't appear in there anywhere;
15 wouldn't you agree with that?

16 A No, sir. I don't see promise, no, sir.

17 Q Okay. You don't see the word guarantee, do you ---

18 A No, sir.

19 Q --- in Plaintiff's Exhibit 1?

20 A No, sir.

21 Q Other than the 1998 memo that you and I are looking at
22 now ---

23 A Yes, sir.

24 Q --- which is Plaintiff's Exhibit 1 isn't it true that
25 up until the date of your retirement, whatever it was in

1 2005, ---

2 A Yes, sir.

3 Q --- you never saw anything else in writing regarding
4 these promises you allege about post-retirement healthcare
5 benefits?

6 A Not that I recall, sir.

7 Q In other words, your allegations about the promise are
8 solely based on what you have testified earlier you allege
9 were verbal promises made to you; correct?

10 A Verbal, verbal, verbal, repetitively. Except for the
11 letter maybe we received in 2009 from the City ---

12 Q I am asking you up until ---

13 A Yes, sir.

14 Q --- the date of your retirement ---

15 A I understand.

16 Q --- right now.

17 THE COURT: Let him ---

18 MR. CONLEY: I'm sorry.

19 THE COURT: Let him finish his -- go ahead and finish
20 whatever you were going to say.

21 THE WITNESS: Yes, sir.

22 A The letter in 2009 the first question I had is if there
23 wasn't a promise and an expectation from the City employees,
24 why would you sent me a letter saying it was stopped.

25 Q Up until 2005 when you retired from the City can you

1 identify for me a single other document, written document,
2 other than Plaintiff's Exhibit 1, the memorandum you and I
3 have discussed, ---

4 A No, sir, I cannot.

5 Q --- that you claim it constitutes written evidence of
6 any promise?

7 A No, sir, I cannot.

8 Q You would agree with me you never saw anything like
9 that, correct?

10 A To the best of my recollection I haven't seen anything.
11 Oh, can I back up for a minute, sir?

12 Q Well, I am sure Ms. Bloodgood will give you a
13 chance ---

14 A All right, sir.

15 Q --- to answer any questions.

16 Chief, you still have -- Chief Rissanen, you still have
17 Plaintiff's Exhibit 3 in front of you; correct?

18 A I'm sorry, sir?

19 Q Plaintiff's Exhibit 3, do you still have Plaintiff's
20 Exhibit 3 in front of you?

21 A Yes, sir.

22 Q And if you could turn over to what is the third page of
23 Plaintiff's 3.

24 A Third page?

25 Q Sure. It is not three on the bottom. Plaintiff's

1 Exhibit 3, Chief. Not Defendant's -- not that -- not
2 Defendant's --
3 A Oh, the other one. Other one. A different color. I'm
4 sorry, sir.
5 Q Defendant's Exhibit 3.
6 A There you go. Thank you, sir. Second page, sir?
7 Q Yes.
8 A All right, sir.
9 Q Plaintiff's Exhibit 3 contains an email that you sent
10 to Ed Astle on Monday, June 20th, 2011, at 1:05 p.m.;
11 correct?
12 A Yes, sir.
13 Q And you wrote that email to Ed Astle, correct?
14 A I -- what I remember I remember talking to him and I
15 got the email. And I don't remember if I talk -- sent an
16 original email or just asked him, quite honestly.
17 Q Okay. Well, look at -- look at the email I am
18 referring to, Alvar Rissanen to Ed Astle, Monday,
19 June 20th, ---
20 A Yes, sir.
21 Q --- 2011, 1:05 p.m.
22 A Yes, sir.
23 Q Do you see it?
24 A That is on the front.
25 Q You typed that email ---

1 A Yes, sir.

2 Q --- to Ed Astle correct?

3 A But I didn't remember.

4 Q Those are your words to Mr. Astle, right?

5 A Yes, sir.

6 Q Meaning you didn't dictate ---

7 A Didn't remember it.

8 Q You didn't dictate it to somebody ---

9 A No, sir.

10 Q --- and they typed it for you, right?

11 A No, sir.

12 Q You typed those words to Ed Astle?

13 A I am a slow typer; but, yes, sir.

14 Q You would agree with me that the only meeting you

15 had with the mayor after you retired in 2005 about these

16 post-retirement healthcare benefits was the one you

17 described occurred in 2009; is that accurate?

18 A The only meeting that I had with the mayor after?

19 Q After you retired about post-retirement healthcare

20 benefits.

21 A 2005?

22 Q Correct.

23 A Well ---

24 Q You had a meeting with Ms. Ruth, Mr. Newton, Julie

25 Elmore. Other than that meeting you have had no more

1 meetings with the mayor ---
2 A I don't recall ---
3 Q --- about -- hold on. Let me finish.
4 A I don't recall any other meetings, sir.
5 Q Let me finish my question.
6 A Okay. I am sorry.
7 Q You had no other meetings other than that one alone
8 involving the mayor and post-retirement healthcare benefits
9 since you retired, correct?
10 A That's the only meeting that I remember with the mayor.
11 Q You can't identify any other entity that was providing
12 retiree health insurance benefits like the City was
13 providing to you in 1998, can you?
14 A City of Columbia was, I believe. I don't know exactly
15 what their program or plan was.
16 Q That is my point; you don't know what the City of
17 Columbia's plan was, do you?
18 A No, sir. And also I believe that was -- well, here
19 again it is hearsay stuff. But ---
20 Q You can't testify to what somebody else told you. Can
21 you identify a single plan that provided the benefits that
22 the City of North Charleston's plan provided to you in '98?
23 A It was my understanding it was the City of Columbia.
24 Q You can't identify any other entity providing a retiree
25 healthcare benefit like the City in '05 even when you

1 retired either, can you?

2 A No, sir.

3 Q You would agree with me that since you have retired the
4 cost of health insurance you pay through the City has
5 increased, correct?

6 A Yes, sir.

7 Q You would agree with me that while you were employed by
8 the City, meaning before you retired, that on a yearly basis
9 what you contributed to the City's healthcare plan changed
10 from year to year; correct?

11 A When I was employed?

12 Q Exactly.

13 A What I contributed?

14 Q For you or your wife.

15 A With my -- our health insurance was free when I was
16 employed.

17 Q Okay. So it never changed while you were employed?

18 A Not that I recall.

19 Q Okay. Certainly since you have retired it has changed
20 on a yearly basis, ---

21 A Correct.

22 Q --- correct? You would agree with me in terms of these
23 promises you allege the mayor made to you the mayor never
24 made you any promises about the cost of any Medicare
25 supplement, did he?

1 A No, sir, not that I recall.

2 Q The mayor never made a promises to you regarding the
3 extent of coverage that any Medicare supplement might have,
4 did he?

5 A Not that I recall, other than to say it was free and
6 you would have free healthcare for the rest of your life.

7 Q Sure, but -- but did he -- but did he tell you that --
8 did he promise you the extent of the coverage it would
9 provide?

10 A No, sir, other than being saying it was free.

11 Q You testified earlier about several conversations you
12 had with Bob King. Do you remember testifying about those?

13 A Yes, sir.

14 Q Do you remember being deposed by me in I think it was
15 January of 2015?

16 A Yes, sir.

17 Q Do you remember being placed under oath and promising
18 to tell me the truth?

19 A Yes, sir.

20 Q Do you remember me asking you about any conversations
21 you had had with Bob King about -- or comments Mr. King had
22 made to you about post-retirement healthcare benefits?

23 A I don't remember you being specific about Bob King,
24 sir.

25 Q Sure. Do you recall me asking you and you only

1 identifying a singular conversation with Mr. King wherein he
2 said -- where he basically referred -- refused to even speak
3 to you about it?

4 A One more time, sir. Because I know my son was the one
5 that actually reminded me of the conversation ---

6 Q Sure.

7 A --- with Mr. King ---

8 Q Do you recall ---

9 A --- since that time.

10 Q --- at your deposition when I deposed you telling me
11 that you only had one singular conversation with Bob King?

12 A I don't recall the number. I really don't, sir.

13 MR. CONLEY: Judge, I can hand up the original if you
14 would like if it is necessary.

15 THE COURT: You can give it -- give it to him. Open it
16 if you are going to impeach him. You are going to impeach
17 him on the number of times he talked to Bob King?

18 MR. CONLEY: And the content of it, Judge.

19 THE COURT: The content might mean something. But I
20 don't know about the numbers.

21 (WHEREUPON, sealed transcript was opened.)

22 Q Chief Rissanen, I am going to hand you what is your
23 deposition transcript ---

24 A Yes, sir.

25 Q --- from when you were deposed by me and actually by

1 Ms. Bloodgood ---
2 A All right.
3 Q --- in 2015.
4 THE COURT: Chief, it will have -- he will give you a
5 page number and a line, okay?
6 THE WITNESS: Yes, sir.
7 THE COURT: And you go to the page and the line number
8 he points you to, okay?
9 THE WITNESS: All right, sir. Thank you.
10 Q Do you have it open, Chief?
11 A I'm sorry, sir?
12 Q If you could open it up.
13 A All right.
14 Q And if you would look at Page 31 to 32.
15 A Thirty-one to thirty-two, sir?
16 Q Yes, correct.
17 A All right, sir.
18 Q And actually if you would just turn on over to Page 32.
19 Are you on Page 32, Chief?
20 A Okay, 32, sir.
21 Q And you go down to Line 9. The lines are on the left-
22 hand page, Chief Rissanen.
23 A All right. Line 9?
24 Q Sure. And do you see the question I asked you
25 beginning on Line 9: Any other conversations about the

1 retiree health insurance issue with other council members
2 other than Ms. Jerome and Mr. -- and you interjected. And
3 your answer was -- and you can read your answer.

4 A Do you want me to read the answer, sir?

5 Q Yes, I do.

6 A It says: I approached Bob King after a council meeting
7 one time and he was -- Bob was a friend of mine also, but he
8 was -- he cut it off basically -- cut it off, as I said -- I
9 think I went up to him and said, Mr. King, why wouldn't we
10 be great-grandfathered; and he said, got to go.

11 And that was basically it.

12 Q And my next question to you was any others that you
13 recall since '09; is that correct?

14 A I said: There was -- may have been but I don't recall
15 at this time, sir.

16 Q So is your testimony today that you didn't recall these
17 other two conversations you have testified as to with Mr.
18 King on January 5th of 2006 but you recalled them today?

19 A Sir, what I am saying is what I said, that I did not
20 recall at that time.

21 Q Sure. So these conversations in addition to the one
22 noted in your deposition transcript that you recall today
23 where Mr. King made apparently substantive statements to you
24 about the retiree health plan, your testimony today is you
25 didn't remember those statements on January 5th, 2016?

- 1 A I certainly didn't remember the one that my son had
2 mentioned to me. And, yes, sir, that is right; I didn't
3 remember them at the time.
- 4 Q When you were the fire chief you on a yearly basis I
5 assume would have had to have provided some type of budget
6 to the City; is that correct?
- 7 A One more time, sir. I'm sorry about my hard of
8 hearing.
- 9 Q Perfectly fine. When you were the fire chief on a
10 yearly basis you would have had to provide some kind of
11 budget to the City on a yearly basis; ----
- 12 A Yes, sir.
- 13 Q --- is that correct?
- 14 A Yes, sir.
- 15 Q And the purpose of providing that budget was that so
16 the City Council could pass a budget each year that
17 incorporated whatever funds your department or some other
18 might need into it, correct?
- 19 A That is correct.
- 20 Q Meaning the funds that you needed to fund the Fire
21 Department had to be approved by City Council, correct?
- 22 A Mayor or Council, yes, sir.
- 23 Q You knew this, correct?
- 24 A Yes, sir.
- 25 Q I mean you knew it before you retired and you knew it

1 after you retired, correct?

2 A Yes, sir.

3 Q Chief Rissanen, if you would take another look at what
4 was marked as Plaintiff's Exhibit 5. And all I am going to
5 ask you to do on each of -- if you would just look at each
6 of the -- it consists of five pages, Chief.

7 A All right.

8 Q If you can verify for me on those five pages that those
9 are your initials and that that is your signature on each of
10 them.

11 (WHEREUPON, witness reviews documents.)

12 A It appears to be, sir.

13 Q Chief Rissanen, I am going to hand you what we have
14 marked as previously as Defendant's Exhibit Number 5.

15 A All right, sir.

16 Q And I apologize for the thickness of it. And I would
17 represent to you that I am not going to ask you about that
18 entire document. But after you have had just a chance to
19 reflect on it I will be happy to direct you to the ---

20 A All right, sir.

21 Q --- piece or portion that I want to ask you about.

22 THE COURT: Why don't you just direct him now.

23 MR. CONLEY: Sure.

24 THE COURT: And he can review that, please, rather than
25 the whole -- reviewing the whole policy.

1 MR. CONLEY: Sure.

2 THE COURT: Tell him which page and section.

3 MR. CONLEY: I am going to do that right now, Judge. I
4 believe it is Page 16, Chief Rissanen.

5 THE COURT: Page 16?

6 MR. CONLEY: Page 16.

7 THE COURT: Page 16. Turn to it.

8 THE WITNESS: Sixteen. Thank you, sir.

9 THE COURT: In the personnel policies.

10 Q The first question for you, Chief, is have you seen
11 Defendant's Exhibit 5 before today; have you ever seen this
12 personnel manual; have you seen Defendant's Exhibit 5 before
13 today; have you ever seen this personnel manual?

14 (WHEREUPON, review of document by witness.)

15 A I probably have. I know there was a period of around
16 sometime around 2004 or possibly might have been a little
17 bit sooner the City came and took up all of the personnel
18 manuals to be revised. It went for quite some time.

19 As a matter of fact, my secretary was having problems
20 getting some information from me for one personnel issue and
21 had to go back and get these -- the information in the
22 portions that we needed.

23 Q Sure.

24 A And but I am assuming so if this was there -- in there
25 I probably have seen it, sir.

1 Q Okay. You would have had access to any personnel
2 policies at the City ---

3 A I would have.

4 Q --- while you were --- let me finish the question just
5 so the record is clear. You would have had access to any
6 personnel policies such as Defendant's Exhibit 5 while you
7 were the fire chief, correct?

8 A Yes, sir.

9 Q You certainly would have had them -- access to this
10 document in 2004 which is when it indicates it came into
11 existence on the first page?

12 A If it was in our offices I would have had access, or I
13 could have gone to the City.

14 Q Okay. Between 1998 when -- or abouts 1998, whenever
15 the Mayor began to make these representations to you that
16 you have testified about, did you ever at any time between
17 1998 and 2005 go look at the City's personnel policies
18 regarding post-retirement benefits?

19 A No, sir, not that I recall. I have gone through the
20 personnel issues looking for personnel issues, but I cannot
21 recall going through and looking for that in particular.

22 Q And so in response to hearing what the mayor was
23 telling you and otherwise, you never made any effort to go
24 look at the City's actual written policies and or whether
25 there was any written policy about post-retirement benefits;

1 correct?

2 A No, sir, I had no reason to. But not only that, as I
3 said, the City had advised Chief Baxley to update his pre-
4 employment thing. That thing had to be improved -- approved
5 by the personnel director as well as the City's attorney.
6 And it is my understanding it was.

7 So that -- I would have assumed that the City attorney
8 would have also given the okay on that particular portion of
9 the policy.

10 Q My question for you, Chief, did you ever one time go
11 look at these personnel policies in regard to post-
12 retirement healthcare benefits?

13 A Not that I recall.

14 Q Look on Page 17 at the top portion of it. There is a
15 middle portion that is labeled "D", transportation and
16 travel. The portion above it talks about insurance in
17 regard to retirees. Are you looking at that section?

18 A That is -- which insert -- where is it?

19 Q The portion that is above Section D, transportation and
20 travel, I am talking about the portion above that. Do you
21 see it?

22 A I might be in the wrong -- that is 202-117, correct?

23 Q No.

24 A No? What page?

25 Q Page 17 of 27.

1 A Oh, 17 of 27.

2 Q And is, again, at the bottom. So 17 you should find a
3 Page 17.

4 A Ah.

5 Q There's a lot of numbers on that page.

6 A Yes, sir. I am looking at every one but the one I am
7 supposed to. I'm sorry, now again, sir, your question?.

8 Q Are you at Page 17 of 27?

9 A Yes, sir.

10 Q And do you see the portion of that page that is above
11 transportation and travel? Do you see that section, that
12 whole section?

13 A Let me go again. That is 11 of 27.

14 Q Chief, we are Page 17 to 27.

15 A Of 27. Okay.

16 Q Right down at the bottom it says City of North
17 Charleston personnel policies.

18 A Yes, sir.

19 Q Page 17 of 27.

20 A All right, now, I'm sorry, sir. One more time.

21 Q Do you see the portion that is above transportation and
22 travel?

23 A Yes, sir, transportation costs?

24 Q Sure. Do you see all that is above that, correct?

25 A Yes, sir.

1 Q Do you see Subsection B up at the top of the page; it
2 talks about insurance?

3 A Yes, sir.

4 Q Okay. If you go down to Subparagraph 3. Do you see
5 it?

6 A Yes, sir.

7 Q Do you see -- if you read Paragraph 3 would you agree
8 with me that one of the provisions in that that says the
9 City can terminate, change coverage, when determined to be
10 in the best interest of the City; do you see that?

11 A It says to complete applicable forms. Are you talking
12 about Subset 3?

13 Q Exactly, yes, sir.

14 A After initial enrollment advanced payments may be made
15 in quarterly, semiannual, or annual installments. Coverage
16 will terminate upon failure of the retiree to make required
17 advanced payment. Upon termination of the City's group
18 plan, planned or when the -- determined by to be in the best
19 interest of the City. Yes, sir.

20 Q And you never saw that provision, correct?

21 A Not that I recall, sir. Could have, but not that I
22 recall.

23 Q You knew the mayor would need City Council to approve
24 anything regarding retiree healthcare benefits, correct?

25 A I knew the mayor to -- again, sir?

1 Q You knew the mayor would need Council to approve
2 anything regarding post-retirement healthcare benefits,
3 correct?

4 A It was my assumption that the mayor and Council would
5 have to have a majority vote to approve anything.

6 Q Sure. And that would apply to post-retirement
7 healthcare benefits as well, correct?

8 A I would just have to assume so, sir; but I'm

9 Q Chief Rissanen, you were asked some questions about I
10 believe it is plaintiff's exhibit -- looks like this is out
11 of order. I'm sorry that is not an exhibit, Chief.

12 Chief, you were asked about this document that is not
13 introduced into evidence but it is some data on it about
14 other fire departments and their pays?

15 A Yes, sir.

16 Q Did you prepare that document?

17 A No, sir, I did not prepare the document. However, the
18 Department would have been sent from -- say -- gotten a
19 letter from the -- or form from the City -- excuse me, the
20 State Fireman's Association requesting the information that
21 pertained to the North Charleston Fire Department.

22 That information would have gone to the City
23 secretary -- not the City secretary, but the Fire Department
24 secretary, the chief fire investigator, and the chief fire
25 inspector to fill it out.

1 Q Did you have any involvement in the collection of the
2 data that is in there other than what might be in there
3 about the City of North Charleston?

4 A I assigned all of that down to my subordinates.

5 Q Listen to my question. Did you have anything to do
6 with any of the data that is in that document other than
7 what might be in there about the City of North Charleston?

8 A About the other departments and what have you?

9 Q Exactly.

10 A No, sir.

11 Q You would have no personal knowledge of that, correct?

12 A Other than what -- if maybe an individual department if
13 I heard from a particular fire fighter or somebody from an
14 individual department. It might be bits and pieces I might
15 have known at the time.

16 Q You had no involvement in assimilating the data that is
17 in there, did you, other than whatever your Department might
18 have provided?

19 A Other than what our department provided, no, sir.

20 Q You testified earlier; and I think you have frankly
21 been consistent with this, but I want to ask. One of the
22 promises you content the mayor made to you is, quote, y'all
23 got a good deal, correct?

24 A Yes, sir.

25 Q And you took y'all got a good deal as a problem; is

1 that correct?

2 A Yes, sir.

3 Q I think another one that you -- a statement you contend
4 the mayor made that was a promise is you have got a -- you
5 have got a great deal; is that correct?

6 A Yes, sir. A sweet deal too. And I have got your back.
7 He told me he had my back in his office the day I went up to
8 him and talked to him about retirement.

9 I told him I thanked him particularly for that program
10 because as the fire chief and hearing it over year after
11 year after year he promised us, all of us, this, I felt
12 especially wanting to be able to tell him thank you.

13 And I told him. I said, Mr. Mayor, I do appreciate
14 this for us; I want you to know that it makes a difference;
15 I wouldn't be able to retire if it probably wasn't for this.

16 And he -- instead of saying, well, you need to watch
17 out and you need to take care, he looked at me straight and
18 he says I have got your back, Buddy; I have got your back.
19 He said it twice. Mr. Anderson was there in the meeting
20 also.

21 MR. CONLEY: One moment, Your Honor.

22 Q Chief Rissanen, I am going to hand you what has been --
23 actually I am not.

24 MR. CONLEY: I don't think I have anything further at
25 this time, Your Honor.

1 THE COURT: All right. Do you have anything very
2 briefly in reply, or do you want to wait until after lunch?

3 MS. BLOODGOOD: I would like to do it quickly right now
4 if I can.

5 THE COURT: Okay.

6 MS. BLOODGOOD: I don't think it will take long at all.

7 THE COURT: That is fine.

8 **REDIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF ALVAR**

9 **RISSANEN:**

10 Q Chief Rissanen, you were asked some questions about a
11 document that was marked as Defendant's 3?

12 A This one?

13 Q Here it is (pointing).

14 A Okay.

15 Q Now you testified you hadn't seen it before. But I
16 want to establish a few things. On top it says that it is
17 ordained by the mayor and City Council, correct?

18 A Yes, ma'am.

19 Q Did you look at it?

20 A Yes, ma'am.

21 Q And then in "A" it says employees who meet the
22 requirements listed below are going to retain their health,
23 life, and dental insurance under the City's group plan by
24 paying the applicable rate; right?

25 A Yes, ma'am. I think ---

1 Q And then ---
2 A Sorry. Sorry.
3 Q For fire -- for the fire retirement the requirement
4 that you have to meet is to either be age 55 or 30 years of
5 covered service?
6 A Yes, sir.
7 Q And this is in 1984. Now in 1984 you testified that
8 you always had group coverage for your dependent and that it
9 was free?
10 A Yes, ma'am.
11 Q So there is nothing -- and then down here -- so under
12 this ordinance if you wanted -- when you retired if you
13 wanted to retain the coverage that you had, which was
14 dependent coverage, it would have been free; that is what
15 you were paying at the time, right?
16 A That is my understanding, yes, ma'am.
17 Q But then you -- then it says you would -- you might
18 have to when you retire pay whatever the active employees
19 were paying?
20 A Yes, ma'am.
21 Q Okay. But at this point there is nothing in here that
22 says it is limited to single coverage?
23 A I mean I assume so.
24 Q Well, let's read it. Employees to meet the
25 requirements. If you in 1984 if you were age 55 or had

1 already worked there for 30 years you would meet the
2 requirements, right?

3 A Yes, sir.

4 Q And it says you have the option to retain. What does
5 retain mean?

6 A Keep.

7 Q Keep health, life, and dental insurance under the
8 City's group plan by paying the applicable rate. What
9 insurance did you have in 1984; was it for you alone, or was
10 it for your dependents?

11 A It would have been for my wife and my children and
12 myself.

13 Q Okay. And so there is nothing in this ordinance that
14 contradicts what the mayor did in 1995, is there?

15 A Not that I am aware of.

16 Q All that the mayor did in his document we have marked
17 Plaintiff's 1 is to add to, to expand the coverage; not only
18 did you have to be 30 years which is ---

19 MR. CONLEY: Your Honor, I object to the question.
20 These are so leading. I have let this go a little bit. But
21 she is effectively testifying for him now. This isn't
22 redirect; this is -- this is she is testifying for Mr.
23 Rissanen.

24 THE COURT: Don't -- don't testify.

25 MS. BLOODGOOD: Okay.

1 THE COURT: Just ask him questions.

2 Q Chief Rissanen, on Plaintiff's Exhibit 1 which is the
3 memo to the finance committee from Keith Summey, ---

4 A Yes, ma'am.

5 Q --- besides getting 100 percent if you worked for 30
6 years, which is what the ordinance states, ---

7 A Yes, ma'am.

8 Q --- did he also provide for reduced payment for people
9 who worked less than 30 years?

10 A Yes, ma'am.

11 Q Okay. And so his plan was -- would you say it was a
12 better plan than the ordinance?

13 A I would think so.

14 Q Okay. But there is -- do you see anything
15 contradictory in these two plans?

16 A No, ma'am.

17 Q Okay. And when you -- you said something about you
18 wanted to back up on that?

19 A Yes, ma'am. And I don't remember what it was.

20 Q That is fine. That is good. I don't know what it was
21 either.

22 A I am sorry.

23 Q The last thing is on Defendant's 5, which is the
24 personnel policy, the title is -- it is -- it will be a
25 blue ---

1 A Yes, ma'am.

2 Q Okay. It says an executive order establishing
3 personnel policies, correct?

4 A And where would -- oh, yes, ma'am.

5 Q Title.

6 A Yes, ma'am.

7 Q And what is the -- executive order number what; what is
8 it up in the right corner?

9 A 2004-1.

10 Q Okay. And does it say in the last whereas that --
11 well, why don't you read the last whereas clause.

12 A The last one?

13 Q Yes.

14 A Whereas South Carolina Code 5-9-30 infers upon the
15 mayor of a city in a mayor council form of government, under
16 which the City of North Charleston is incorporated, that
17 that law require a mayor the responsibilities and duties
18 regarding personnel matters including but not limited to
19 employee hiring, supervising, terminating, and discipline.

20 Q Okay. And then on the second page on the top.

21 A Yes, ma'am.

22 Q Would you read the sentence about what the executive
23 order of the mayor under that, what does it say?

24 A The policies set out in the executive order shall
25 supplement and supersede all policies relating to the same

1 subject.

2 Q And then on Page 17 of 27 that you looked at before
3 with Mr. Conley. On Number 4, B4, that -- that provision
4 for the 15 years, you get 50 percent; 20 years,
5 33-and-a-half, etc.; that is the same provision that the
6 mayor did in 1998, isn't it?

7 MR. CONLEY: Objection, Your Honor.

8 A It appears to be the same promise. Portion of the same
9 promise.

10 MR. CONLEY: Your Honor, she is ---

11 THE COURT: Overruled. Go ahead.

12 Q And -- and the language that is in the ordinance about
13 coverage terminating -- when it would terminate, on the
14 bottom of the ordinance, is the same language that is in the
15 mayor's executive order of two thousand ---

16 THE COURT: Mr. Conley, I understood your objection.
17 But ultimately I am going to have to read it and make a
18 decision regardless of what he says and what she says, okay.

19 MR. CONLEY: I understand, Judge.

20 THE COURT: Okay?

21 MR. CONLEY: I am not trying to ---

22 THE COURT: I understand. I understand your objection.
23 But she is trying to get it over with and speed it up.

24 Q So the ---

25 THE COURT: I am going to allow her to do that, okay.

1 Q So the information that is in the ordinance appears in
2 the mayor's executive order in 2004, ---
3 A Yes, ma'am.
4 Q --- correct? And the information that is in the
5 ordinance is part of what is the personnel policies for the
6 City of Charleston, correct?
7 A The City of Charleston?
8 Q The information on 27 is found in a document called
9 Executive Order Establishing Personnel Policies?
10 A Okay. Yes, ma'am, I -- I lost you. I'm sorry.
11 Q I just want to establish that the information in the
12 ordinance is showing up in the executive order of the mayor?
13 A Yes, ma'am.
14 Q Okay. Thank you.
15 THE COURT: What number is the ordinance; what ---
16 MS. BLOODGOOD: The ordinance, Your Honor, is
17 Defendant's 3
18 MR. CONLEY: Three.
19 THE COURT: Is it up here?
20 MR. CONLEY: Yes. Yes, sir. Do you want me to bring
21 you a copy?
22 THE COURT: Please hand it to me.
23 MR. CONLEY: Yes, sir.
24 THE COURT: All right. We will adjourn until 2:30.
25 See you then.

1 (WHEREUPON, 10/18/2017, 1:07 p.m. adjourned for lunch
2 break.)

3 (WHEREUPON, resume bench trial, 10/18/17, 2:34 p.m.)

4 MS. BLOODGOOD: Yes. Chief Baxley.

5 (WHEREUPON, the witness was duly sworn.)

6 THE CLERK: Please be seated. Sir, for the record if
7 you will please state your name, spelling your last name.

8 THE WITNESS: Michael Heyward Baxley. B-A-X-L-E-Y,
9 last name.

10 **DIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF MICHAEL BAXLEY:**

11 Q Chief Baxley, were you employed by the City of North
12 Charleston?

13 A Yes, ma'am, I was.

14 Q How many years were you employed?

15 A Thirty-four years.

16 Q And approximately when did you start or when did you
17 retire?

18 A November of 1971 through 2005; June 30th, 2005.

19 Q Okay. And how old were you when you retired?

20 A Fifty-four.

21 Q Fifty-four?

22 A Fifty-four, fifty-five.

23 Q And what was your job title at the time of retirement?

24 A Personnel chief for the City of North Charleston Fire
25 Department.

1 Q Okay. How long were you the personnel chief?

2 A Approximately seven, eight years. I think it is eight.

3 But around eight years.

4 Q Okay. And generally what were your job duties as
5 personnel chief?

6 A I was in charge of personnel matters to assist the fire
7 chief on budgetary matters, sick leave programs, hiring
8 boards; anything on a day-to-day basis that come across the
9 desk into the fire chief's office I would usually handle.
10 Take care of it for him.

11 Q Did you have to handle things like orientation of
12 employees?

13 A Yes, ma'am, that was part of the hiring board
14 processes.

15 Q Okay. Did you ever talk to employees about wages?

16 A Yes, ma'am, I did.

17 Q Did you ever talk to them about the promise that the
18 mayor made regarding retiree health insurance?

19 A Yes, ma'am, I did.

20 Q And what did you tell them?

21 A I would have told them if they worked 30 years -- we
22 had -- during the hiring board I ran the orientation class
23 that before we brought them into the hiring -- or hiring
24 committee itself. And I would give them sick leave
25 policies, tardiness policies, one percent fund; anything to

1 deal with their job and the amount of hours they would work
2 at all, and also the insurance programs and insurance
3 policies.

4 Q Okay. And what did you tell them specifically about
5 retirement in conjunction with what the mayor had promised?

6 A That if you stayed 30 years and worked for the City of
7 North Charleston for 30 years you would have your health
8 insurance for the rest of your life.

9 Q Okay. Was there any other part of that promise?

10 A And that your wife or your dependent would be able to
11 buy -- purchase insurance on the side.

12 Q Okay. Were you -- did the opportunity to keep your
13 wife on the insurance policy affect you at all?

14 A Oh, yes.

15 Q Why?

16 A Why? Because I was able to -- are you talking about
17 before I retired or after I retired?

18 Q Before you retired for her.

19 A Oh, before I retired. Well, my insurance was free; and
20 then her insurance was free also. So it was a very -- an
21 excellent benefit for us to have.

22 Q When you say her insurance, was that the dependent
23 insurance was free?

24 A Yes, ma'am.

25 Q And while you worked ---

1 A Family insurance.
2 Q --- before you retired it was all free?
3 A All free.
4 Q Okay. And then after you retired why was that promise
5 to keep her on the insurance policy important?
6 A Because I had been counting on it. I counted on it for
7 all of my -- you know, all of my career and everything. I
8 didn't want to leave the Fire Department to, you know, go
9 anywhere else because of the benefits that I was receiving
10 and she was receiving.
11 Q What is your wife's age?
12 A My wife's is three years younger than I am. She is 62
13 right now.
14 Q Okay. So and you have turned 65?
15 A Me?
16 Q Yes..
17 A I -- yes, ma'am. Last year I turned 65. I am 66.
18 Q And what insurance does your wife have right now?
19 A COBRA. She has COBRA with the City. We paid for the
20 policy.
21 Q Okay.
22 A \$682 a month for her right now.
23 Q Between 1998 - and you saw a letter earlier where the
24 mayor set out his promise in 1998 - and the time you retired
25 in 2005 did you ever hear in any meetings or staff meetings

1 or from anyone about this promise?

2 A Oh, yes, ma'am, I sure did. Many times.

3 Q Okay. Well, tell me about some of those times.

4 A Well, I heard it from Bob Connella. Because I had a
5 day-to-day basis in working with Bob Connella. He was the
6 personnel director for the whole Fire Department -- excuse
7 me, for the whole City.

8 So a lot of disciplinary actions and a lot of personnel
9 matters that I had I had to go talk to him or to the City
10 attorney and talk through the City attorney to him.

11 And staff -- staff lunches. We had lunches
12 throughout -- throughout the years. Had each -- you know,
13 maybe a fire -- one of the fire stations where three trucks
14 would come. And we would talk about that.

15 And the mayor -- any time the mayor had any kind of new
16 development or new things that were coming out in the City
17 he always kept us apprised of what was going on.

18 And he would always say: You got a honey of a deal, a
19 sweet deal; you got a honey ---

20 Q And what was he talking about; what was the honey of a
21 deal or a sweet deal?

22 A That you stayed 30 -- over 30 years and worked for the
23 City, when you turned 65 you would have your health
24 insurance for -- or health insurance for the rest of the
25 life.

1 Q Okay. Was there anyone else at the City then than Bob
2 Connella who talked to you about the mayor's promise?

3 A My boss. My boss, Chief Rissanen.

4 Q Okay.

5 A Yeah.

6 Q Any City Council members?

7 A I had one time I had brought it up to Rhonda Jerome
8 at -- as -- as Chief Rissanen said, one time I brought it up
9 to her, at a ball park up there. Because her and her
10 husband used to run the concession stand up at Park --
11 excuse me, Pepperhill.

12 And I asked her about -- I was talking to her about it.
13 She said: Y'all ain't got nothing to worry about. You put
14 your 30 years in. You have got it. Like the mayor said,
15 you have got a honey of a deal.

16 Q Okay. How about the mayor, did you ever have a
17 conversation with him about the promise?

18 A I had one conversation directly one-on-one with the
19 mayor. And it was in the hallway of one of the floors of
20 City Hall. And it was the type of a situation to where he
21 spoke to me and I spoke to him, like we always did. Because
22 I have known him ever since we were in high school together
23 and everything.

24 And he mentioned it. He said, oh, you have got your
25 years I now. And I said, yes, sir, I have got my years

1 in -- years in now.

2 He says, you better be careful; you better be careful
3 now. And he says, yeah, you got a honey of a deal; all you
4 have to do is stay to 65 and then you can have your health
5 insurance for the rest of your life.

6 And I said, yes, sir; yes, sir; thank you; appreciate
7 it.

8 Q As a personnel director or a chief were you aware of
9 the turnover rate in North Charleston?

10 A Oh, yes, ma'am. Yes, ma'am. We had a major turnover.
11 And the mayor was -- the mayor, Council; everybody was
12 highly concerned about that issue.

13 Because as -- we had to work people overtime or either
14 shut down trucks. Especially when the first ones we would
15 go to shut down would be the mini pumpers or either the
16 ladder trucks.

17 Q Was that turnover prior to 1998, that big turnover
18 problem; or after?

19 A I am extremely bad on dates. I am sorry, but I am ---

20 Q Let me ask ---

21 A --- extremely bad on dates. So ---

22 Q Let me ask you ---

23 A I can't pinpoint the dates of things.

24 Q Let me do it this way. Was the high turnover rate
25 before the mayor made his promise to you or after the mayor

1 made his promise?

2 A Oh, it was before. It was before, yes.

3 Q Okay. And as personnel chief do you know if the
4 turnover rate improved any lost less firefighters after he
5 made that promise?

6 A Our long-term firefighters that we were losing such
7 as -- like I remember one of our battalion chief, Marshall
8 Stone, he went to the State Ports Authority. We lost
9 another chief that went to -- I don't remember exactly. And
10 we lost some captains that went to EMS and different other
11 fire departments.

12 We lost a couple of firefighters, seasonal firefighters
13 that went to other departments because of the amount of
14 hours that we were working. Because it was basically kind
15 of doing a shift change. Doing a shift change. We would go
16 to three -- three, twenty-four on; and forty-eight off. To
17 work 24, 48.

18 And they -- we would talk about it in orientation. Can
19 I refer back to that? That because -- because we were
20 losing so many firefighters it was important to us to handle
21 that.

22 Because I was -- I was talked to by my personnel
23 director which is Bob Connella that went over -- we were
24 having -- they were having problems before I took over the
25 hiring boards. Let's put it that way. All right. Myself

1 and Chief Judge did. And they had problems about some of
2 the issues that were -- through dealing through the hiring
3 board.

4 So I had to come up -- I was asked through Chief
5 Rissanen through Bob Connella to come up with a check-off
6 sheet to make sure that we covered all of these programs and
7 policies such as sick leave, tardiness program, your amount
8 of salary, the hours you worked, one percent fund money, the
9 retirement situation about maintaining the insurance after
10 you worked 30 years and you got to 65 you can have -- you
11 get your insurance and everything that way.

12 And I would cover these items in the orientation
13 classes. But when we got to the hiring boards Chief Judge
14 and I was in charge of the hiring board.

15 But Chief Judge would ask the question did Chief Baxley
16 go over these. And he would check them off to you. And
17 then he would check them off on the sheet.

18 After that I would sign the sheet. Chief Judge would
19 sign the sheet. And the firefighter or the applicant would
20 sign the sheet. And also it was notarized at that
21 particular time and it was put in their file. It was put in
22 the files.

23 So I had three file cabinets in my office as the
24 personnel chief. And those files when I left was in there.

25 Q Okay.

1 A And ---

2 Q Now did ---

3 A --- what happened to them after that, I don't know.

4 Q Okay. Did you rely on the promise of free insurance
5 until age 65, a supplement policy, and letting your
6 dependents be on the policy until they turned 65?

7 A Yes, ma'am, I would have -- I relied on it. I was
8 relying on it to help me when I would retire.

9 Q And how did you rely on it?

10 A To help supplement my call or how much I would have to
11 pay.

12 Q Okay. If they had not had that promise would you have
13 changed your behavior in any way? If you didn't think there
14 was free insurance would you have done something differently
15 while you were employed?

16 A Yes, ma'am, I would have. I definitely ---

17 Q What?

18 A I would have stayed longer years. I would have stayed
19 longer. Even though I was having medical problems with my
20 knees and everything I would have stayed with the City.

21 In fact, I even worked after I retired. I worked a
22 few -- a few months on request from the chief of police
23 which was in charge of the Fire Department at the time. And
24 to the mayor's office I worked as a consultant ---

25 Q Okay.

1 A --- to help him out.

2 Q And you saw a letter -- or you are familiar with a
3 letter that we marked earlier that in 2009 the mayor sent a
4 letter to all -- to everyone and said we are going to change
5 the program, correct?

6 A Yes, ma'am. And that was like being hit by a baseball
7 bat.

8 Q Okay. What did you -- what happened when you got that
9 letter; what did you do?

10 A I was very -- I guess you could say very upset. That I
11 was very -- I didn't know what we were going to do. I
12 didn't know what I was going to have to do then because I
13 was going to have to be paying -- you know, where am I going
14 to get insurance from?

15 Q And you were already retired at that time, correct?

16 A Yes, ma'am, retired four years.

17 Q So did you talk to anyone at the City when you got that
18 letter -- or what did you do when you got the letter?

19 A Well, first of all, Chief Rissanen and I had
20 conversations with each. We went and we called the
21 personnel department. Ms. Ruth, I call her Ms. Ruthie - Ms.
22 Ruth. And requested a meeting with the mayor.

23 All I think -- I think I -- I believe I called the
24 mayor's office and got his secretary to give us a time and
25 date that we could come in there.

1 Al and I have discussed -- excuse me, Chief Rissanen
2 and I had discussed, you know, that I would go ahead and
3 call. And we made an appointment. And of course the mayor
4 granted us an appointment to come talk to him.

5 Q Okay. And what do you recall about that meeting?

6 A I recall that we had -- we -- we went in there and we
7 talked about losing our -- losing our health insurance when
8 we turned age 65 and all and that it would be a total
9 burden, that I had counted on that all my life and I had
10 worked those years.

11 I had -- he had promised, the personnel director, Mr.
12 Connella, had told us in various -- you know, at various
13 times. But these luncheons that we had it was always -- it
14 was always repeated. And I had to go to all of those
15 because I was the personnel chief. Because I had to go to a
16 lot of them.

17 Chief Rissanen and I attended, I don't know, I guess 20
18 or 30 or maybe or so luncheons throughout the few years
19 there that we have to be at all of them because we had the
20 full personnel in there.

21 Q Do you know if it is going to be hard for your wife to
22 get insurance when she goes off of COBRA until she turns age
23 65?

24 MR. CONLEY: Objection, Your Honor. It calls for
25 speculation by him as to what may happen to his wife's

1 health insurance in the future.

2 THE COURT: Overruled.

3 MS. BLOODGOOD: You can answer that.

4 A Okay. I -- well, would you repeat that?

5 Q Yes.

6 A I'm sorry. I am nervous.

7 Q I will repeat it. But I don't want you to tell me what

8 other people told you. I just want you to tell me what you

9 know, okay.

10 A Okay. Yes, ma'am.

11 Q So between the time your wife goes off of COBRA and the

12 time she becomes eligible for Medicare are you going to have

13 to find her insurance?

14 A Yes, ma'am, we are.

15 Q And is it going to be difficult to find her insurance?

16 A Yes, ma'am, because she has had pre-existing

17 conditions. In fact, those other pre-existing conditions

18 are getting worse.

19 Q Okay. I want to show you what we have marked as

20 Plaintiff's Exhibit 6 which are some retirement forms. And

21 if you would just flip through those.

22 (WHEREUPON, witness reviewed documents.)

23 A Yes, ma'am.

24 Q And that is your name and initial ---

25 A Yes, ma'am.

- 1 Q --- on the forms?
- 2 A My name and initial, yes, ma'am.
- 3 Q Okay. On the second page they have the rates for
- 4 effective July 1st, 2010?
- 5 A Yes, ma'am.
- 6 Q And on the fourth, I think you probably you were
- 7 sitting here and you heard Chief Rissanen's testimony about
- 8 what the fourth box says. But why don't you just go ahead
- 9 and read that again.
- 10 A If eligible dependents are not ---
- 11 Q Fourth box.
- 12 A Oh, okay. I was -- coverage with the City of North
- 13 Charleston will end when I and/or my dependent becomes
- 14 eligible for Medicare benefits.
- 15 Q Okay. When you read that what did you think?
- 16 A That my wife would be covered with her -- when she got
- 17 the Medicare -- Medicare benefits coming in at age 65.
- 18 Q Had anyone else told you at the City that your wife
- 19 would be covered other than what you read in this retiree
- 20 election form?
- 21 A That I don't recall, other than -- I can't recall.
- 22 Q Okay. And then go to the next page which are the rates
- 23 that are to become effective July 1st, 2011. Is the exact
- 24 same language on that form also?
- 25 A Coverage with the City of North Charleston will end

1 when and/or I or my dependent becomes eligible for Medicare
2 benefits. Yes, ma'am.

3 Q Okay. And then on the next ---

4 A That is 2011.

5 Q Okay. And then in July of 2012 the form that I -- that
6 you filled out appears to have your initials on, and then
7 the word I understand is underlined; is that correct?

8 A Right.

9 Q Why? Why is that? Did you underline it?

10 A Yes, ma'am.

11 Q Okay. Why?

12 A Because of the fourth -- the I guess the fourth
13 paragraph: Coverage with the City of North Charleston will
14 end when either I or my dependent become eligible for
15 Medicare benefits. If I become eligible for Medicare
16 benefits before my dependent I understand that my dependent
17 will receive a COBRA notice and no longer eligible for
18 dependent coverage. I

19 I had to sign that because our cover letter is -- I
20 signed it and dated them, but I wrote on there I understand.
21 But I didn't agree with it.

22 Q Okay.

23 A So we still had to sign it.

24 Q Have -- have you started paying -- well, let me back
25 up. When did you become 65?

1 A June 12th, 2016.

2 Q Okay. And have you started paying for a Medicare
3 supplement?

4 A Yes, ma'am. June 13th -- or June -- yeah, June 12th.

5 Q And have you sat down and figured out what that medical
6 supplement costs you from the time you started until today?

7 A Yes, ma'am.

8 Q And ---

9 A It is 137.40 per month. And since I started it in June
10 of 2016 to present, to this month, it is \$2,630.22.

11 Q And what do you want this court to do in terms of
12 making you whole?

13 A I want this court to -- pay my supplement which I was
14 promised all the years, and through the conversations that I
15 had with the upper echelon and the mayor and everything; and
16 I want them to pay for my supplemental insurance and to
17 enable my wife to be put on a City program at a single rate,
18 not a family rate, but a single rate.

19 Q All right. Thank you.

20 THE COURT: Cross-examination.

21 MS. BLOODGOOD: Mr. Conley may have questions.

22 **CROSS-EXAMINATION BY MR. CONLEY OF CHIEF MICHAEL BAXLEY:**

23 Q Good afternoon, Chief Baxley.

24 A How are you doing, sir?

25 Q How are you this afternoon?

- 1 A All right, sir.
- 2 Q Chief Baxley, you would agree with me that providing
3 benefits -- or the providing of benefits by the City to
4 retirees requires the approval of City Council?
- 5 A Yes, sir, I would think so; the City, the mayor and the
6 Council, yes, sir.
- 7 Q And the mayor is part of City Council, correct?
- 8 A Yes, sir.
- 9 Q A voting member along with the other eight or ten
10 members, correct?
- 11 A Yes, ma'am -- I mean, yes, sir. Excuse me. I'm sorry.
- 12 Q That's okay. You never made a specific inquiry about
13 whether the benefits you claim were promised to you were
14 ever approved by City Council, correct?
- 15 A No, sir. Not to my knowledge.
- 16 Q You have never seen any document showing where City
17 Council approved the benefits or the promise that you claim,
18 correct?
- 19 A Other than my check-off sheets that I had to sign every
20 year
- 21 Q You have never seen any document -- and I will just use
22 by way of example, an ordinance or any other for instance
23 budgetary matter showing where City Council approved the
24 promise you allege was made by the mayor; correct?
- 25 A Not to my knowledge.

1 Q You would agree with me the North Charleston City
2 Council is a legislative body, right?

3 A Yes, sir.

4 Q And your longtime role, as you described it, as the
5 personnel director, you certainly had I would assume some
6 involvement with City Council from time to time on varying
7 issues for the Fire Department; correct?

8 A No, sir, not with the City Council.

9 Q You did not?

10 A No, sir.

11 Q Okay.

12 A I would have it with my boss, the fire chief. And he
13 would refer me to either the personnel director, Bob
14 Connella, or to the City attorney on matters.

15 Q You would agree with me that even based on your
16 allegation no promise was broken to you by the City until
17 you turned age 65, correct?

18 A That's right, sir.

19 Q You would agree with me at the time you filed this
20 lawsuit in 2013 the City hadn't broken any promise to you at
21 that point, correct?

22 A No, sir, not until I turned 65.

23 Q And you understand what I am saying by that question;
24 at the time you went and filed this lawsuit against the City
25 claiming the City had broken a promise to you you would

1 agree with me when you filed that lawsuit the City had
2 broken no promise to you at that time; correct?

3 A I don't understand it that way, sir.

4 Q Sure.

5 A Please ---

6 Q Do you recall filing your lawsuit in this case?

7 A Yes, sir.

8 Q Do you remember that that was in 2013?

9 A Yes, sir.

10 Q And you would agree with me that you weren't 65 years
11 old in 2013, right?

12 A No, sir, not at that time.

13 Q Sure. You didn't turn 65 until 2016, correct?

14 A Yes, sir. That's right.

15 Q So you would agree with me that from 2013 when you
16 filed your lawsuit until you turned 65 in 2016 the City
17 hadn't broken any promise to you, correct?

18 A No.

19 Q And so that goes to my point. You would agree with me
20 that at the time you filed this lawsuit that is the subject
21 of why we are here today, the City had broken no promise to
22 you at that time; correct?

23 A Except for the paper they sent me in 2009 that it would
24 be taken away from us.

25 Q Sure.

1 A The promise was taken away from us.

2 Q Sure. So but had you lost anything at that point in
3 2013?

4 A I wasn't eligible to it until I had reached age 65.

5 Q Exactly. So you had been denied no benefit by the City
6 that you claim you were promised, at the time you filed this
7 lawsuit; right?

8 A No, sir.

9 Q Among the various statements, promises, I guess we can
10 argue about how you want to label those that you claim the
11 mayor made. You would agree with me that the mayor never
12 gave you any specific information about the kind of Medicare
13 supplement you might be provided post retirement, correct?

14 A Not to my knowledge. That is right.

15 Q He never provided you any information as to what the
16 coverage levels of that Medicare supplement might look like,
17 did he?

18 A No, sir, not -- not to my knowledge.

19 Q And you understand that when you, especially in your
20 role in personnel and now having been retired, you certainly
21 understand that when you buy a policy of insurance it comes
22 with certain terms and conditions so that you, the
23 purchaser, you, the insurer, know what is in the policy,
24 what -- correct?

25 A Yes, sir..

1 Q You understand that concept?

2 A Yes, sir.

3 Q And yet you would agree with me in all of these
4 promises you allege the mayor made to you about, for
5 instance, a Medicare supplement, there were no specifics
6 ever given to you by the mayor or anyone else as to what
7 that Medicare supplement might cover; correct?

8 A No, but I would assume -- I would assume that it would
9 be equivalent to what we have with the City.

10 Q And that is an assumption by you; we would agree on
11 that, right?

12 A Yes, sir, it is an assumption.

13 Q In other words, you would agree none of the mayor's
14 statements ever contained those kinds of specifics, did
15 they?

16 A No, sir.

17 Q None of -- none of the statements that you claimed Bob
18 Connella made to you ever contained those kinds of
19 specifics, did they?

20 A Not to my knowledge, no, sir.

21 Q And I just want to be clear that the promise that you
22 claim the mayor broke, was to provide you with a Medicare
23 supplement when you turned age 65; correct?

24 A Yes, sir.

25 Q You don't claim as part of your lawsuit, do you, that

1 the City promised to allow you to just continue on with
2 coverage in their health-care plan; do you?

3 A Repeat that, sir.

4 Q Sure. And it is a bad way to ask the question. But
5 you have answered it partially. And that is, what you claim
6 the mayor promised you was the oppor- -- was that the City
7 would provide you with a paid for Medicare supplement
8 policy, correct?

9 A Yes, sir.

10 Q You are not claiming in this case, correct, that the
11 City or the mayor promised to allow you just to continue in
12 its regular health-care plan after age 65?

13 A I wish I could.

14 Q But you are not claiming that in this case, correct?

15 A No, sir.

16 Q You are not claiming that the City ever promised that
17 kind of benefit to you, right?

18 A No, sir. But I would assume it would be equivalent.

19 Q Again, that is an assumption you are making; not
20 something that anybody ever specifically said to you,
21 correct?

22 A I assume so.

23 Q At some point in time you actually looked at the City's
24 policy or ordinance regarding retirement benefits, didn't
25 you?

1 A No, sir.

2 Q You don't remember looking at what those ordinances
3 said about retirement fringe benefits?

4 A No, sir.

5 Q You don't remember seeing that you read when you looked
6 at that that those benefits were subject to change?

7 A I don't -- I don't -- I don't -- not at this time I
8 don't think ---

9 Q You don't remember when you looked at that seeing that
10 the benefits were subject to modification when you looked at
11 that ordinance and those policies?

12 A There was memos and things of that nature that were --
13 that was subject to change, of course.

14 Q Well, that is what I am asking you. I am going to
15 suggest to you that you probably recall being deposed by me
16 in January of 2015.

17 A Yes, sir, I do.

18 Q 2016. Pardon me. Correct?

19 A Ah -- yeah, January 2016.

20 Q Yeah, I had to think about that too. It has been -- it
21 has been a while.

22 A And dates is bad on me.

23 Q Do you sitting here today have recollection of telling
24 me during that deposition that you had actually went and
25 looked at the City's policies regarding retirement benefits?

1 A I don't recall that I said it; no, sir, I don't.

2 (WHEREUPON, sealed transcript was opened.)

3 Q Chief Baxley, I am going to hand you a copy, the
4 original copy, of your deposition transcript from
5 January 4th of 2016.

6 A Yes, sir.

7 Q I am going to ask you to turn to Page 31 of that
8 transcript if you would for me. Did I say Page 31, Chief?
9 I'm sorry.

10 A Page 31?

11 Q Yes, sir.

12 A Yes.

13 Q And if you go down to the very bottom, the bottom two
14 lines, Line 24; do you see it on Page 31?

15 A Yes, sir.

16 Q Yeah, the question I asked you was did you ever look at
17 the City's policy to see what exactly it said and in the
18 handbook about these retirement fringe benefits. And what
19 was your answer?

20 A It says, yes, sir. There I go, I say it. I guess I
21 was referring to the handout, the handout book that we get
22 from City Hall periodically.

23 Q Okay.

24 A For benefits because it has benefits in it.

25 Q Sure.

1 A But our -- were you referring to the city policy book
2 that ---

3 Q I am referring to you exactly what I said in the
4 question. It sounds like you have some recollection now of
5 having looked at the City's policy manual and seeing
6 something about fringe benefits.

7 A And here I did say -- yes, sir, I did.

8 Q Okay. And you would agree with me the next question I
9 asked you is do you recall it saying anything about the
10 City, dash, they were subject to change and subject to
11 modification. And your answer again was?

12 A What does subject to modification mean to you.

13 Q No, your first answer.

14 A Oh, excuse me. Yes. Yes. Okay.

15 Q Sure. And then I followed that up with my question was
16 what does, quote, subject to modification mean to you. And
17 your answer was?

18 A That things could change.

19 Q And then my next question was, and what does subject to
20 change mean to go. And your response was?

21 A What it means to me is that things can change and if
22 something does change it changes.

23 Q Now you mentioned a policy or handbook that you might
24 get from time to time from the City -- issued by the City,
25 correct?

1 A Yes, sir.

2 Q I am going to show you what we marked earlier as
3 Defendant's Exhibit Number 5, Chief Baxley. And you do not
4 have to look at the entire document. I am going to ask you
5 a few specific questions about it.

6 Does that look like a policy manual that you have seen
7 before that is issued by the City? In general?

8 A It says executive orders. Yes.

9 Q Sure. If you will turn over to Page I believe it is 17
10 of 27. You might actually start on 16 of 27 just for some
11 clarify, where it says Section 6, retirement, Chief Baxley.

12 A All right, I am on Page sixteen of seven -- of
13 twenty-seven.

14 Q Thank you. Do you see down at the bottom where it says
15 Section 6, retirement?

16 A Yes, sir. Okay. If you would flip then to the next --
17 the following page, Chief Baxley. And the next page starts
18 with Subsection B and the word insurance. Do you see it?

19 A Yes, sir, at the top of the page.

20 Q So now looking at this, is this what you were referring
21 to, having looked at at the time I took your deposition;
22 meaning when I asked you that series of questions at your
23 deposition isn't -- you're looking at this passage that is
24 contained in Defendant's Exhibit 5 what you were
25 referencing?

- 1 A I don't -- I do not ever recall seeing this.
- 2 Q Okay.
- 3 A I do not recall ever seeing this.
- 4 Q But you clearly saw something that indicated to you
5 clearly that the City's policy regarding retirement fringe
6 benefits was subject to change, correct?
- 7 A Yes, sir. Yes, sir. I admit that.
- 8 Q You just don't recall here today what it was you saw
9 that indicated that?
- 10 A Exactly.
- 11 Q Although you may have seen a policy such as or similar
12 to perhaps Defendant Exhibit 5, you never actually went and
13 pulled or looked for or asked about any ordinances related
14 to employee fringe benefits; did you?
- 15 A No, sir, I do not recall.
- 16 Q Do not recall doing so?
- 17 A I do not recall doing so.
- 18 Q Nonetheless while you were certainly a senior ranking
19 person within the Fire Department you would have had access
20 to city ordinances, correct?
- 21 A Yes, sir.
- 22 Q You would have known how to go look for an ordinance as
23 you needed to or felt compelled to do so, correct?
- 24 A Yes, sir. Chief Rissanen would have them.
- 25 Q And in 1998 when you alleged the mayor began to make

1 these promises what was your position in the Fire Department
2 then?

3 A I was personnel chief.

4 Q And certainly at that time as the personnel chief you
5 knew how to go locate, look at city ordinances; correct?

6 A Yes, sir.

7 Q Yet in regard to retiree fringe benefits you have never
8 done that, right?

9 A No, sir. I relied on I guess the promises that was
10 made to me over the years. I felt comfortable with that.

11 Q You made some comments while Ms. Bloodgood was
12 testi- -- asking you questions in regard to the statements
13 the mayor made to you.

14 And I think -- and you -- I am not trying to put words
15 in your mouth. What I heard you say is that the mayor
16 makes -- the mayor you allege made statements to you such as
17 you have got a honey of a deal, correct?

18 A Yes, sir. Numerous of times I heard him say that.

19 Q Sure. And I think you also said that on numerous times
20 you heard the mayor say you have got a sweet deal?

21 A Yes, sir.

22 Q We have already established you remember being deposed
23 in January of 2016, right?

24 A Yes, sir.

25 Q Do you recall telling me during that deposition,

1 telling us during that deposition, that what the mayor said
2 on those occasions was that he was, quote, working on a
3 honey of a deal, that he was working on a sweet deal; do you
4 recall that?

5 A No, sir, I do not.

6 Q Sure. Then I am going to ask you to if you have got it
7 there to your left or right, the deposition transcript ---

8 A Yes, sir.

9 Q --- we read just a moment ago. And this time I am
10 going to ask you to turn to Page 25 if you would for me,
11 Chief Baxley.

12 A All right, sir.

13 Q And I am going to go about three -- or two-thirds down
14 the page to Line 18. Do you see Line 18 over to the right,
15 sir?

16 A Yes, sir.

17 Q And the question I ask you, I am asking you a question
18 actually about these meetings you have referenced at the
19 stations. And I ask you: Because you would have been at
20 all of those meetings.

21 And what was your response about what -- read your
22 answer to that question.

23 A I had to make arrangements with the battalion chiefs to
24 get the people there. And he would say working on a honey
25 of a deal, working on a honey of a deal. Sweet deal. And

1 this went on for years after that.

2 Q The he you are referring to in that answer you gave me
3 is Mayor Summey, correct?

4 A Yes, sir, for the previous ---

5 Q And so ---

6 A --- statements above that.

7 Q Here today you would agree with me that when you were
8 deposed in this case what you testified to was that the
9 mayor's statements were that he was, quote, working on a
10 honey of a deal; right?

11 A I guess those were the words I used, yes.

12 Q Well, do we guess; or do we see it in the transcript?

13 A Well, it is in the transcript; yes, sir, I said honey
14 of a deal, working on a honey of a deal.

15 Q You also mentioned during the questioning by Ms.
16 Bloodgood, I believe, a memo that you saw, attained, or that
17 was provided to you in 1998. Do you recall testifying about
18 that?

19 A What memo ---

20 Q Sure. Let me just ---

21 A --- are you talking about, sir?

22 Q Let's see if it is up here. I am going to ask you to
23 take a look at defendant's -- or Plaintiff's Exhibit 1, Mr.
24 Baxley -- or Chief Baxley. Excuse me.

25 A Yes, sir.

1 Q And I believe your testimony was that you also contend
2 that that document, that memo, is part of or a parcel of the
3 promise or promises the mayor or the City made to you. Is
4 that accurate?

5 A Yes, sir.

6 Q You would agree with me that nowhere in that memo does
7 it use the word promise, does it?

8 A Uses the word promise?

9 Q Correct.

10 A No, sir.

11 Q And who is that memo to?

12 A Members of the finance committee.

13 Q And to your knowledge the finance committee is who?

14 A Mayor and Council. Or the finance committee is the
15 committee that works for the mayor.

16 Q And if you look at the bottom paragraph of that
17 memorandum wouldn't you agree with me that that is not a
18 promise, a guarantee, of any sort made by the mayor but it
19 is a recommendation that he is making to Council about what
20 he would like it - it being Council - to do in regard to
21 retiree healthcare benefits?

22 A Yes, sir, but these are the same things that you he
23 kept saying to us in these meetings that we would have.

24 Q Well, I am asking you about that memo right now.

25 A No, sir.

1 Q There is nothing in there that promises you anything,
2 is there?

3 A No, sir. Huh-uh.

4 Q You would agree with me?

5 A Thirty years of service, zero component share; City
6 share, 100 percent.

7 Q But there is nothing in it that promises you or anybody
8 else anything; wouldn't you agree with me?

9 A Yes, sir, I agree.

10 Q You were first employed as a firefighter with the City
11 of North Charleston in 1971 when it was still a -- well, it
12 was still a special purpose district, right, in '71?

13 A Yes, sir, I worked when -- I think they were under
14 contract with the City. I was in the City station. I
15 worked in the City station.

16 Q You continued to work as a firefighter even when the
17 City was subsequently incorporated in, I guess, '72; is that
18 right?

19 A Chartered in '72.

20 Q Moved right over to the City, right?

21 A Yes, sir. I was right there, same station.

22 Q You don't contend in this case that any promises were
23 made to you about post-retirement healthcare benefits in
24 1972 when you went to work for the City, correct?

25 A Not to my knowledge, sir.

1 Q You don't contend -- you don't contend that the City
2 made any promises to you about post-retirement healthcare
3 benefits until 1998, correct?

4 A Promises, yes, sir.

5 Q So from '72 to 1998, spanning we would agree almost 26
6 years, correct; yes, ---

7 A Right.

8 Q --- the City made no promises to you about retiree
9 healthcare benefits, right?

10 A Not to my knowledge.

11 Q While you were working for the City of North Charleston
12 Fire Department you never applied to any other fire
13 departments for a position, correct?

14 A No, sir, I did not.

15 Q I think you indicated at some point that you applied
16 for -- or looked into a job at Westvaco at some point while
17 you were working for the City; ---

18 A Yes, sir, that ---

19 Q --- but that was a non-fire service-related position,
20 correct?

21 A Exactly.

22 Q And you did not take it?

23 A No, sir. I was not -- I don't know if I was passed or
24 not. I just went for the interview, and that was it.
25 Because there was a lot of things going on in my life at

1 that particular time. There was a lot of deaths that I --
2 I -- crossed my plate that particular year.

3 Q You also at some point in time applied for a job with
4 the Moncks Corner Fire Department though, right?

5 A No, sir, I did not. I could have. I was asked. I
6 used to teach -- I was an instructor for South Carolina Fire
7 Academy and the National Fire Academy of 1972 until a few
8 years before I obtained the personnel chief.

9 And I went across to a lot of fire departments
10 throughout. And I had a lot of them to approach me that
11 needed a fire chief. And they asked me would I be
12 interested.

13 Q Well, do you recall ---

14 A And I did not.

15 Q Oh, I'm sorry. I didn't mean to cut you off.

16 Do you recall testifying at your deposition that at
17 some point in time the City of Moncks Corner offered you a
18 job as their fire chief?

19 A They did not offer me a job. They asked me if I would
20 be interested in any kind of job there. But I did not --
21 there wasn't a formal ---

22 Q You did not accept it, did you?

23 A No, sir, I did not.

24 Q And it sounds like based on your testimony today it is
25 not something you had even actually sought out or applied

1 for?

2 A No, sir, it was not.

3 Q If you would take a look again at Plaintiff's Exhibit 6

4 for me, Chief Baxley..

5 A Yes, sir.

6 Q Can you just look at each page of that document or that

7 exhibit and confirm to me that the signature is yours on

8 each page and that the initials on each page are in fact

9 yours.

10 A Yes, sir, they are.

11 Q Thank you.

12 Chief Baxley, I am going to hand you what has

13 previously been marked as Defendant's Exhibit 11.

14 A Yes, sir.

15 Q Can you confirm for me that that is -- or confirm for

16 us that that is the resignation memo you submitted to the

17 City when you decided to retire in 2005?

18 A Yes, sir, it is.

19 Q And that is your signature on it?

20 A Yes, sir, it is my signature.

21 Q This may sound silly, but I assume you are the one that

22 drafted it; you are the one that typed it; you didn't

23 dictate and have somebody do it for you?

24 A Yes, sir.

25 MR. CONLEY: I don't believe I have anything further at

1 this time.

2 THE COURT: Okay. Thank you, sir.

3 Redirect.

4 MS. BLOODGOOD: Briefly, Your Honor.

5 **REDIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF MICHAEL**

6 **BAXLEY:**

7 Q Chief Baxley, you were asked some questions about
8 timing of the lawsuit and when you filed it. Did you try to
9 work this out and get it resolved with the mayor before you
10 filed your lawsuit?

11 A Yes, ma'am. We asked for a meeting with the mayor's
12 office.

13 Q Okay. And when you filed your lawsuit were you certain
14 that the decision had been made not to pay your supplemental
15 insurance at the time you were to turn 65?

16 A Yes, ma'am.

17 Q And the City didn't pay your supplemental insurance ---

18 A No, ma'am.

19 Q --- when you turned 65, did it?

20 A No, ma'am.

21 Q You also testified that you know as a personnel chief
22 that the terms of insurance change from year to year, right?

23 A Yes, ma'am.

24 Q Did the City of North Charleston in all the years that
25 you worked there have good insurance?

1 A Excellent insurance.

2 Q Okay.

3 A Excellent insurance.

4 Q Was there any reason that you would expect when you
5 retired that you would have a different type of insurance?

6 A No, ma'am, not whatsoever.

7 Q Did you expect when you retired that you would have
8 excellent insurance?

9 A Yes, ma'am, I did.

10 Q Even if the terms changed and, you know, there was this
11 deductible or this drug or something like that, was your
12 understanding of what was promised to you that it would be
13 similar to what you had had while you were employed?

14 A I would think it would be equivalent or better, yes,
15 ma'am.

16 Q Okay. And you also testified that the City Council
17 knew about the mayor's promise. Did you have any
18 conversations with any City Council members at any point
19 about the mayor's promise?

20 A The only one that I had mentioned before was Rhonda
21 Jerome up at Pepper Hill ---

22 Q Okay.

23 A --- football field -- or basket -- baseball field.

24 Q Okay. And as personnel chief was it your understanding
25 that the mayor had authority to make decisions about

1 personnel matters?

2 A Yes, ma'am. He was a strong mayor.

3 Q Okay. Did he have authority to make decisions

4 about ---

5 A Yes, ma'am.

6 Q --- wages?

7 A I'm sorry. Excuse me?

8 Q Wages?

9 A Yes, ma'am.

10 Q Okay. What other kinds of things as -- because you are

11 personnel chief, did the mayor as the -- in his executive

12 order and in being in charge of personnel what kinds of

13 personnel decisions did he make?

14 A Disciplinary actions, reviews; of that nature.

15 Memorandums. Shift -- shift, hours, wages; different things

16 of that nature.

17 Q Okay. Thank you. That's all the questions I have.

18 A Could I -- could I make ---

19 THE COURT: You may step down. Thank you very much.

20 THE WITNESS: I'm sorry, sir.

21 MS. BLOODGOOD: Your Honor, I would like to call my

22 next witness.

23 THE COURT: Yes, ma'am.

24 MS. BLOODGOOD: Okay. Chief Forner.

25 (WHEREUPON, the witness was duly sworn.)

1 THE CLERK: Please be seated. Sir, for the record if
2 you will please state your name, spelling your last name.

3 THE WITNESS: Clifford Wayne Forner. F-O-R-N-E-R.

4 **DIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF CLIFFORD WAYNE**
5 **FORNER:**

6 Q Chief Forner, were you employed by the City of North
7 Charleston's Fire Department?

8 A Yes, ma'am, I was.

9 Q And how many years were you employed?

10 A Twenty-seven-and-a-half years.

11 Q Okay. Approximately when did you retire from the Fire
12 Department?

13 A 2009.

14 Q And how old were you when you retired?

15 A Fifty-one?

16 Q What was your job at the time of retirement?

17 A I was a battalion chief at the City of North
18 Charleston.

19 Q And just briefly, what does a battalion chief do?

20 A I had a shift duty where I was responsible to make sure
21 that the trucks were manned probably. If a call went out I
22 would be in charge of that unit that responded. I was in
23 charge of the fire investigation division and also the
24 rescue division.

25 Q Did you supervise any employees?

1 A Yes, ma'am, I did.

2 Q Okay. Now while you were employed - you have heard the
3 testimony here - did you also become aware of the promise
4 that the mayor made regarding retiree health insurance?

5 A Yes, ma'am.

6 Q And what was your understanding of that promise?

7 A That we would have life insurance for the rest of our
8 life and that we would also have a supplemental retirement
9 and that our family members -- or our wife could be on that
10 policy.

11 Q Okay. And where did you hear this promise and when
12 approximately?

13 A Throughout -- starting in the year '98 I was informed
14 that we would be getting the policy stating that we would
15 have those privileges at different meetings that the mayor
16 requested with the rest of the department, the employees, at
17 functions or at luncheons at individual stations that I was
18 required to set up and have personnel at those stations.

19 Q Okay. And did you ever hear the mayor make the promise
20 himself?

21 A Yes, ma'am, I did.

22 Q Okay. And do you recall what he said?

23 A Yes, ma'am. That he was going to take care of us.
24 That this program for health insurance would cover us for
25 the rest of our life. That we would have a supplemental

1 policy, health insurance policy, and our wives could be on
2 it.

3 Q Was it your under- -- did you have any reason to think
4 that the mayor was telling you a fib or that he wasn't
5 telling you the truth?

6 A No, ma'am. For a couple of reasons. One, the
7 integrity of the mayor I tell was impeccable. I always
8 enjoy talking with him. And things he always promised us
9 came to the fruition.

10 Also when they had the meetings at these different
11 stations different members of the City Council would be
12 there. The finance director would be there.

13 So my understanding would be that these subjects have
14 the fiduciary responsibility to the City so why would they
15 allow that to go on without telling the mayor, hey, you
16 can't say that. So therefore I believed ---

17 Q Okay.

18 A --- what he was saying.

19 Q And did you rely on the promise?

20 A Yes, ma'am.

21 Q How did you rely?

22 A As I got older and planning on retiring that that money
23 would be not be coming out of my pocket to, you know, pay
24 for that -- those things.

25 And so I depended on it that it would be taken care of,

1 I would have no out-of-pocket expenses.

2 Q Okay. When you -- in 2009 did you also receive the
3 letter that we have previously marked - and I can show it to
4 you if you need to see it - from the mayor saying that there
5 would be a change and you would when you reached 65 the City
6 was going to cease all retirement benefits to ---

7 A Yes, ma'am, I did see that.

8 Q Okay. And what was your reaction when you saw that
9 letter?

10 A I was furious. To be honest, I was very upset that
11 they were going to take -- the way I understood the policy
12 for the memo to read what I was going to lose my health
13 insurance if I did not continue with the plan at that time.
14 Also that the supplemental retirement would also be taken
15 from me.

16 Q Okay. Did that letter have any effect on your decision
17 as to when to retire?

18 A Yes, ma'am. The memo came out in May 4th I believe.
19 And we would had had to have retired by July 28th in order
20 to receive the benefits that I was receiving at that time.

21 Q Okay. So had you planned on retiring by July?

22 A No, ma'am. That totally came out of left field. At
23 that period of my life I had a son retiring - retiring --
24 graduation from college. And I also had a son that was
25 going through a divorce and with a child custody case. So

1 did I want to retire then? No, ma'am. Both of my sons were
2 in my pockets pretty deep.

3 Q Were you eligible at the time you retired to get
4 retirement?

5 A Yes, ma'am. Not at full benefit.

6 Q Okay. And did you pay extra to get to full benefit?

7 A I did. At that time my wife and I looked at our
8 financial responsibilities and I figured we needed -- I
9 wanted to get the full 30 years, but all I could afford to
10 do at the time was to buy back some retirement time.

11 So we took some money out of my wife's 401(k) in order
12 to buy us more time for retirement.

13 Q How much did you buy?

14 A I was only allowed to buy back two years of retirement
15 time.

16 Q Okay.

17 A Which at the cost of \$10,000 per year. So a total of
18 \$20,000.

19 Q Okay. And are you now receiving insurance and paying
20 a -- like 16 and-a-half percent ---

21 A Yes, ma'am.

22 Q --- for the cost of your insurance?

23 A That's correct.

24 Q Okay. And when will you turn 65?

25 A In -- I am 58. So seven more years.

1 Q All right. So you have not yet had to pay the
2 supplement insurance on Medicare?

3 A That is correct.

4 Q But you had to pay 20,000 in order to retire, full
5 benefits?

6 A Yes, ma'am.

7 Q How long had you planned on working for the City?

8 A Definitely I wanted to get to 30 years. But if -- I
9 mean my evaluations were impeccable. So I would think that
10 there would be no reason to fire me at any time after 30
11 years.

12 Q Okay. And I am going to hand you what I have shown
13 other people are Plaintiff's Exhibit 7, the retiree election
14 form. Are those documents the retiree election forms that
15 you filled out and initialed?

16 A Yes, ma'am.

17 Q And in 2010 and 2011 does it indicate that your
18 dependent would be covered until the dependent reached 65
19 years old?

20 A In 2010?

21 Q Yes. If you look on the fourth block that is
22 initialed ---

23 A Oh, yes.

24 Q --- what does that say?

25 A Coverage with the City of North Charleston will end

1 when I and/or any dependents become eligible for Medicare
2 benefits.
3 Q Okay. And when you signed these documents did you sign
4 them because you agreed with everything that was in them?
5 A No, ma'am.
6 Q Why did you sign them?
7 A I felt like if I didn't sign them I would have no
8 insurance.
9 Q Okay. And what do you want this court to do?
10 A I would like this court to find that I am eligible to
11 receive the supplemental insurance for Medicaid. I would
12 like to receive my \$20,000 back. And continued with full
13 coverage of my healthcare plan, that the City pay that.
14 Q Okay. I don't have any other questions. But Mr.
15 Conley will.
16 THE WITNESS: Thank you very much.
17 **CROSS-EXAMINATION BY MR. CONLEY OF CHIEF CLIFFORD WAYNE**
18 **FORNER:**
19 Q Good afternoon, Chief Forner.
20 A Good afternoon, sir.
21 Q Nice to see you this afternoon.
22 A Good to see you, sir.
23 Q You started working for the City in 1982, correct?
24 A Yes, sir.
25 Q You would agree with me at the time you began working

1 for the City of North Charleston no promises were made
2 to you by the City or any of its employees regarding
3 post-retirement healthcare benefits for you, correct?

4 A So you are saying after I joined the Fire
5 Department ---

6 Q I am asking you -- I'm sorry, I didn't mean to cut you
7 off. I am asking you at the time you were hired in 1982 ---

8 A Yes, sir.

9 Q --- the City of North Charleston didn't make any
10 promises to you at that point about post-retirement
11 healthcare benefits, right?

12 A Correct.

13 Q You subsequently retired in the end of June of 2009,
14 right?

15 A Yes, sir.

16 Q And when you retired from the City of North Charleston
17 you actually begin receiving post-retirement healthcare
18 benefits, correct?

19 A Yes, sir.

20 Q And the benefit you begin to receive at the time you
21 retired in June of 2009 was you were able to, one, continue
22 to participate in the City's health care plan; correct?

23 A Yes, sir.

24 Q And, two, instead of paying what might be the full rate
25 for you to participate, you pay in as -- you paid as a what

1 I will term a discounted rate where you were only paying
2 16-point-something percent of that cost as opposed to 100
3 percent, correct?

4 A That is correct.

5 Q And as we sit here today you are still receiving that
6 benefit from the City of North Charleston, correct?

7 A That is correct.

8 Q And that is -- what you are receiving as we sit here
9 today is precisely at this point in time what the City of
10 North Charleston promised according to you to provide you,
11 right?

12 A Due to the fact that I retired in 2009, yes, sir.

13 Q So as we sit here today the City hasn't broken any
14 promise to you, correct?

15 A Due to the fact that I retired in 2009 that is correct.

16 Q I believe like the others you would agree with me that
17 the first time you claim the mayor made any representations
18 that you heard about post-retirement healthcare benefits was
19 in 1998; is that correct?

20 A Yes, sir.

21 Q You don't claim and you would agree with me that to
22 your knowledge, your personal knowledge, neither the mayor
23 nor anyone else from the City of North Charleston made any
24 promises of any kind regarding post-retirement benefits to
25 you before 1998; correct?

1 A That's correct.

2 Q Which means that between 1982 when you were first hired
3 by the City and 1998 when you alleged the mayor made these
4 promises to you, which is almost 16 years, the City made no
5 promises to you about post-retirement healthcare benefits;
6 correct?

7 A Now we were told that we would have health insurance
8 for the rest for life, yes, sir.

9 Q Sure. But you claim that occurred -- first occurred in
10 1998, correct?

11 A Before the mayor came on board we had insurance ---

12 Q Sure.

13 A --- that took care of us, yes, sir.

14 Q Sure. But had anybody prior to 1998 -- no one prior to
15 1998 -- let me rephrase that. You would agree with no one
16 prior to 1998 had made any promises to you about post-
17 retirement healthcare benefits?

18 A That is correct, yes, sir.

19 Q What you heard, what you personally heard, at these
20 meetings where you allege the mayor made these statements
21 were the following: You would agree with me what you heard
22 the mayor say is, quote, we've got you, we are going to take
23 care of you; correct?

24 A Yes, sir.

25 Q What you also would agree with me you heard, you

1 personally heard the mayor say, was we are going to give you
2 insurance for the rest of your life, quote; is that correct?

3 A Yes, sir.

4 Q You would agree with me no other City representative
5 other than the mayor, the mayor being Mayor Summey, ever
6 made those kinds of representations to you; correct?

7 A That is correct.

8 Q While you were employed by the City of North Charleston
9 Fire Department you never worked for any other fire
10 departments, right?

11 A That is correct.

12 Q And moreover, you never even applied for a job or a
13 position with any other fire department during the 27-and-a-
14 half years you worked for the City of North Charleston?

15 A That is correct.

16 Q And the consequence of that is is that you were never
17 offered any job that you applied for during the time you
18 worked for the City that you turned down, correct?

19 A I never applied for any other job while I worked for
20 the City of North Charleston.

21 Q Which means there was nothing for you to ever turn down
22 in terms of an employment offer, right?

23 A Yes, sir.

24 Q As a battalion chief you were battalion chief for how
25 many years?

1 A Approximately 12 years.

2 Q And during that 12 years as a battalion chief you would
3 agree with you that you had full access to the City's
4 policies?

5 A Through the department head, yes, sir.

6 Q Sure. The point being, if you as a battalion chief
7 felt you needed to either, one, see a city policy, or, two,
8 inquire about whether a particular city policy might exist,
9 you knew the channels to go through to find -- find it or
10 whether it even existed; right?

11 A Yes, sir.

12 Q Yet you would agree with me you never reviewed any
13 policies regarding post-retirement healthcare benefits for
14 City employees, correct?

15 A That is correct, no city ordinances; no, sir.

16 Q Well, city policies or ordinances; right? You never
17 reviewed either of those in regard to post-retirement
18 healthcare benefits while you worked for the City?

19 A No, sir. You are correct.

20 Q And you never even asked to look at those policies or
21 ordinances, right?

22 A That is correct.

23 Q You discussed a few minutes ago the letter that you
24 received in 2009 that you indicated made you very upset in
25 regard to the changes that were being made in retirement

1 benefits, right?

2 A Yes.

3 Q And your reaction to that letter was to decide you were
4 going to retire?

5 A I felt that I had to retire in order to keep the
6 benefits they I had at the time.

7 Q And your conclusion about that was reached without you
8 ever going to speak with anyone in the human resource
9 department at the City regarding how that change might
10 affect you in particular, correct?

11 A Yes, sir, that is correct.

12 Q You simply relied on what you read in the letter to
13 make your decision that you are going to retire from the
14 City, correct?

15 A Yes, sir.

16 Q As a battalion chief you knew there was a human
17 resource department in the ---

18 A Yes, sir.

19 Q --- City building, correct?

20 A Absolutely.

21 Q I assume you had probably been there either personally
22 or perhaps for somebody who worked for you in the past?

23 A Absolutely.

24 Q No one at the City in 2009 suggested, recommended, or
25 asked that you retire then; did they?

1 A Not directly, no, sir.

2 Q A moment ago Ms. Bloodgood asked you about
3 Defendant's -- or Plaintiff's Exhibit 7, Chief Warner. My
4 simple question for you for purposes of the record is --
5 would you look at the -- I think it is four pages that
6 constitute that exhibit.

7 And let me know if that is your signature and your
8 initials that appear on each one of those pages.

9 (WHEREUPON, document reviewed by witness.)

10 A They appear to be copies of my signature, yes, sir.

11 Q You would agree with me that there were times while you
12 were working for the City of North Charleston that you
13 recall receiving handbooks or policy handbooks; ---

14 A Yes, sir.

15 Q --- is that right?

16 A Yes, sir.

17 Q I'm sorry, I am not trying to get in your space here.
18 I would ask you to take just not an in-depth glance, but I
19 am going to show you Defendant's 5 and ask you if you recall
20 ever seeing that policy book or manual before.

21 (WHEREUPON, pause for review of exhibit by witness.)

22 A Did you want me to just read ---

23 Q You don't have to read the whole thing. Is that a
24 policy manual you recall receiving at any time or anything
25 like it in the past?

1 A It is establishing personnel policies for the City .
2 employees; so, yes, sir, I probably have looked at this
3 briefly. I don't know that I studied it.
4 Q Oh, and I am not asking if you studied it.
5 A Okay.
6 Q And I think that is, frankly, consistent with what you
7 have told me before when I took your deposition that you
8 recalled seeing policy manuals over the years that might
9 have been given to you by and what -- by the City and
10 through the City; correct?
11 A Yes, sir.
12 Q And I think you would also agree with me that
13 oftentimes when you would receive those policy books you
14 might never look at them thoroughly, correct?
15 A Not thoroughly, no, sir. That is correct.
16 Q And you would also agree with me that you never looked
17 at any of those policy handbooks or employees handbooks you
18 might have been provided for any information in them
19 regarding post-retirement benefits, correct?
20 A I'm sorry? Say that one more time.
21 Q Sure. Wouldn't you also agree with me that when you --
22 on the occasions that you did receive some type of policy
23 manual such as Defendant's Exhibit 5 ---
24 A Yes, sir.
25 Q --- from the City you didn't bother to look or examine

1 what was in there and what was written in there about post-
2 retirement healthcare benefits, correct?
3 A That is correct, yes, sir.
4 Q Since your retirement in 2009 has your 16.7 percent, or
5 abouts, that you pay each month to participate in the City's
6 healthcare plan, increased?
7 A Yes, sir.
8 Q Mr. Forner, let me ask you to take a look at
9 Defendant's Exhibit 14. And if you could just take a look
10 at it and let me know if you recall receiving that document
11 or that letter. I shouldn't say document. That letter to
12 you at some point.
13 (WHEREUPON, pause for review of document by the witness.)
14 THE COURT: He just asked you have you seen it. He is
15 not asking you to read it and study it.
16 Q I am just asking you ---
17 A I'm sorry. Yes, sir, I have seen it.
18 THE COURT: He asked you if you have seen it.
19 THE WITNESS: Okay.
20 THE COURT: Okay.
21 Q That's all I needed to know.
22 A I understand.
23 Q And if you would, if you would look at Defendant's
24 Exhibit 15 for me. And can you verify that that is the
25 notification of your retirement that you provided to the

1 City in June of 2009 when you made the decision to retire?
2 A Yes, sir, that is correct.
3 MR. CONLEY: I don't believe I have anything further,
4 Judge.
5 THE COURT: Okay. Redirect.
6 MS. BLOODGOOD: No, Your Honor.
7 THE COURT: Okay. You may step down. Thank you very
8 much.
9 THE WITNESS: Thank you, sir.
10 THE COURT: Okay. We are going to take about a five or
11 ten-minute break.
12 (WHEREUPON, break was had 10/18/17, 3:45 p.m.)
13 (WHEREUPON, resumed bench trial, 10/18/17, 4:05 p.m.)
14 THE COURT: If you will call your next witness, please,
15 ma'am.
16 MS. BLOODGOOD: Thank you, Your Honor. Call Chief
17 Hood.
18 (WHEREUPON, the witness was duly sworn.)
19 THE CLERK: Please be seated. Sir, for the record, if
20 you will please state your name, spelling your last name.
21 THE WITNESS: Willie Lee Hood. H-O-O-D.
22 **DIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF WILLIE HOOD:**
23 Q Chief Hood, were you employed by the City of North
24 Charleston?
25 A Yes, ma'am.

1 Q And how many years were you employed?

2 A Thirty-three.

3 Q Approximately when did you start and when did you stop

4 working for the City?

5 A I started in June '72, and I ended May 2005.

6 Q And what was your title when you retired?

7 A Assistant chief.

8 Q Okay. Were you ---

9 A In charge of maintenance.

10 Q Okay. You were in charge of maintenance?

11 A Yes, ma'am.

12 Q All right. And did you supervise people while you were

13 assistant chief in charge of maintenance?

14 A I had a couple of people working with me. But most of

15 our stuff was ushered out to the shops and things like that

16 for maintenance.

17 Q Okay. And how old are you today?

18 A Seventy-one.

19 Q How old were you when you retired?

20 A Fifty-nine.

21 Q Okay. Are you currently on Medicare?

22 A Yes, ma'am.

23 Q And are you paying for a supplement?

24 A Yes, ma'am.

25 Q Now how long were you the assistant chief of

1 maintenance before you retired?

2 A About 10 years.

3 Q And you have heard the testimony. In 1998 when Mayor
4 Summey became mayor were you aware of the promises that he
5 made regarding the payment for your retiree health
6 insurance?

7 A Yes, ma'am.

8 Q And how were you aware of that?

9 A I was aware -- we had a luncheon at Cross County Fire
10 Station and he explained it to us, the policy.

11 Q Okay. And what did he tell you?

12 A He told us that since he became mayor that he wanted
13 retirees to have free insurance. And I left with the
14 understanding that he accomplished that and that we had free
15 insurance for life is the way they put it.

16 At that time I didn't hear anything about how it was
17 going to go about, you know, as far as supplementing that.
18 But it was for life.

19 Q Right. And the free insurance for life let me -- let's
20 just talk about that. Free insurance for life, when you
21 turned 65 you have to go on Medicare; right?

22 A That's correct.

23 Q So and but Medicare doesn't cover a lot of things that
24 you need, right; it doesn't cover ---

25 A That would cover 80 percent.

1 Q And most people usually get a supplemental policy?

2 A That is correct.

3 Q So if you want it to be free after you are 65 you need

4 that supplemental policy, right?

5 A That is correct.

6 Q So saying that you are going to get free health

7 insurance for life and saying when you are 65 we are going

8 to get you a supplemental policies, is that the same thing?

9 A I would think so, in hearing it. Yes.

10 Q Did your supervisors also talk to you about the retiree

11 insurance?

12 A No, ma'am, not that I can recall. We have had

13 discussion about it. But, you know, not a formal meeting

14 kind of thing that they talked about it. The only time I

15 have heard it was when the mayor brought it up at the

16 luncheon.

17 Q Okay. And were you clear on what the mayor was

18 offering?

19 A When I left that meeting I had the understanding that

20 that is what we had. And when I retired that is what I got.

21 Q Okay. And when you retired you got free insurance

22 until you turned age 65, correct?

23 A That is correct.

24 Q Okay. Now you were already retired went in 2009 when

25 there was a decision to change the benefits, right?

1 A Yes, ma'am.

2 Q And how did you find out about that?

3 A They sent a letter, a communication to me, ---

4 Q Okay.

5 A --- stating that there would be changes because the
6 City budget was kind of like out of whack from fourth gear
7 and so they were trying to figure out what they could do.
8 So that is one of the things that they did.

9 Q Okay. And what did you do when you received that
10 letter?

11 A Well, at first -- you know, I had some business
12 upstairs to go to Human Resource and fill out the petition
13 for the next year insurance. And I met with Ms. Christina
14 Ruth. And she was -- I was asking her about the supplement
15 policy. Because I had been checking on it all this time.
16 And she said the City didn't have a supplement policy.

17 . And I said, well, I thought we were supposed to get a
18 supplement policy. And she said, no, we don't have a
19 supplement. She said but I am working on it.

20 So I had a couple of years to go before, you know, I
21 needed a supplement policy. So I expected that she would
22 probably get it done.

23 Q Okay. Because she told you they were working on it?

24 A Yes, ma'am.

25 Q Okay. Let me show you what we have marked as

1 Plaintiff's Exhibit 8 and let you look at that.

2 A Uh-huh. Okay.

3 Q What is that document?

4 A This is a letter that she sent in December 3rd, 2010,

5 telling me that I was eligible for supplement. You know,

6 that I could call this number 740-596 -- and I think that is

7 a City Hall number. And I could go to Humana and get a

8 supplement policy and drugs.

9 Q Okay.

10 A But at the time I received this letter I've already had

11 Humana as a drug plan and I had United Healthcare for my

12 supplement.

13 Q Okay. So ---

14 A So I have already done took care of this when I got

15 this letter.

16 Q Okay. And when you got the letter that we marked as

17 Plaintiff's 8 you already had bought the supplement from

18 Humana?

19 A Yes, ma'am.

20 Q And ---

21 A Because I turned -- I turned 65 January 9th, ---

22 Q Okay.

23 A --- 2011.

24 Q And at that point you knew the City wasn't going to pay

25 for it?

1 A I know the City wasn't going to pay for it.

2 Q All right. Have you -- let me ask you this question.
3 When you started paying for the supplement versus today, are
4 you -- has the supplement, the price of the supplement gone
5 up?

6 A Well, there are different levels of the supplement. I
7 don't have the most expensive. I have what they call an
8 N-plan. A lot of people get the F-plan. And I did get a
9 deduction when I took out the policy. And that is basically
10 why I use United Healthcare because they gave me a 20
11 percent discount. It started out at \$84.10. It is now \$131
12 and change.

13 So it is increased over the years.

14 Q Okay.

15 A The older you get, the more you are going to pay.

16 Q Okay. And have you calculated how much you have paid
17 out-of-pocket?

18 A Yes, ma'am, I did that. And I came up with a little
19 over \$9,000. But now my plan, I have to pay my deductible.
20 In the F-plan you don't. So I added my deductible, and when
21 I did that it came to \$10,891.

22 Q And that is what you have paid so far to date out-of-
23 pocket for your supplemental policies?

24 A That is correct.

25 Q Policy.

1 A Uh-huh.

2 Q Okay. What do you want the court to do?

3 A Well, I would like the City to go along with what they

4 told us they would do, give us insurance for life. And that

5 would mean paying for it, my supplemental insurance. I

6 would like to see them pay me for the money that I am out-

7 of-pocket up to this -- up to this date.

8 Q Okay.

9 A And I would like them to pay for my attorney fees,

10 court costs.

11 Q Chief Hood, I forgot to ask you this question before.

12 Did you -- when the mayor made this promise to you did you

13 believe him?

14 A Oh, yes, ma'am. I believe everything the mayor tells

15 me.

16 Q Okay. And did you rely on his promise?

17 A Yes, ma'am, I really did; relied on it as far, you

18 know, extra income when I retired, you know, I would have

19 that. I wouldn't have that to worry about.

20 Like Chief Rissanen and Chief Baxley, my wife was on --

21 on -- on -- on City plan. She got her own job. She had her

22 own insurance. So I was just worrying about the money that

23 I -- you know, that was helping me with my finance.

24 Q Are you on a fixed-income?

25 A Yes, ma'am.

1 Q And when you say you relied, how did you rely; what did
2 you do to rely on this?

3 A What did I do?

4 Q Yes.

5 A Well, I retired at an early age, 79, because of ---

6 Q At what age did you retire?

7 A I'm sorry, at 59.

8 Q Okay.

9 A I'm sorry. Because of the policy that they were going
10 to give us, the insurance. And if I had known that they
11 were going to cancel it I would have tried to have added
12 more years to my retirement because I would have gotten
13 more -- more money from my retirement. Do you see what I am
14 saying?

15 I would have -- I could have gone at the age of 62 and
16 gotten an extra three years, and I would have benefit like
17 to be able to pay for the supplement. Do you see what I am
18 saying?

19 Q I do. Thank you.

20 MS. BLOODGOOD: Mr. Conley may have some questions for
21 you.

22 THE WITNESS: Sure.

23 **CROSS-EXAMINATION BY MR. CONLEY OF CHIEF WILLIE HOOD:**

24 Q Good afternoon, Chief Hood.

25 A Good afternoon, Mr. Conley.

1 THE COURT: Mr. Conley, let's don't reinvent the wheel,
2 okay. We have heard -- just what is peculiar to this
3 particular one, okay.

4 Q Chief Hood, when you were employed as a firefighter
5 with the City of North Charleston beginning in 1972 at that
6 point in time when you were hired, the City didn't make any
7 promises to you about post-retirement healthcare benefits;
8 correct?

9 A Yes, that is correct.

10 Q They didn't make -- the City didn't make any promises
11 to you in 1972 about providing you with a Medicare
12 supplement once you retired, correct?

13 A That is correct.

14 Q And in 1998 of course you are still working for the
15 City, and you are an assistant chief; is that right?

16 A Correct.

17 Q As an assistant chief within the Fire Department you
18 would have been familiar with how to gain access to city
19 policies, correct?

20 A Sure.

21 Q And also in that position within the Fire Department
22 you would have been familiar with how to gain access to city
23 ordinances, correct?

24 A Yeah, you can go to Human Resources ---

25 Q And you ---

- 1 A --- to obtain the policies.
- 2 Q You might not have had direct access, but if you wanted
3 to see a city ordinance or a city policy you certainly knew
4 there were people you could seek out at the City who could
5 get that information for you; correct?
- 6 A Definitely.
- 7 Q And you knew how to do that if you needed to, right?
- 8 A Yes, sir.
- 9 Q Or wanted to, right?
- 10 A Yes, sir.
- 11 Q The first time the mayor, according to you, made any
12 verbal promises to you, was in 1998; right?
- 13 A That is correct.
- 14 Q So you and I would agree that for the first 24 years
15 you worked for the City of North Charleston no one made any
16 promises to you, in particular verbal promises, about post-
17 retirement health care benefits; right?
- 18 A That is correct.
- 19 Q And I think I am also correct that the only verbal
20 representation you claim the mayor ever made to you about
21 post-retirement healthcare benefits was during one of these
22 meetings at a station in 1998, correct?
- 23 A That is correct.
- 24 Q When he was talking to a large group of Fire Department
25 personnel including you?

1 A That is correct.

2 Q And other than the mayor you certainly don't allege
3 that anyone else with the City or employed by the City made
4 any -- made any verbal representations to you about post-
5 retirement healthcare benefits, correct?

6 A That is correct.

7 Q Only the mayor?

8 A Only the mayor, uh-huh.

9 Q And your interpretation of what the mayor said in the
10 1998 at this meeting was in part based on a memo that you
11 had seen that the mayor wrote in 1998. Do you recognize
12 that?

13 A It wasn't based on that memo. Because I didn't see
14 that memo way until after the meeting with -- the luncheon
15 with the mayor.

16 Q Okay. So you saw the memo after ---

17 A That's correct.

18 Q --- the mayor? And other than seeing that memo -- and
19 just so we are clear for the record maybe I will ask you to
20 identify it.

21 If you would take a look at Plaintiff's Exhibit 1.
22 When I refer to the memo, Chief Hood, that is what I am
23 referring to. I think that is what you are referring to as
24 well, correct?

25 A Yeah, I saw this -- this memo well after the meeting

1 with the mayor.

2 Q Sure.

3 A The luncheon with the mayor.

4 Q And you would agree with me other than that written

5 documentation there, you never received anything else from

6 the City that you claim or relied upon in regard to

7 promising these post-retirement healthcare benefits;

8 correct?

9 A Besides the memo in '09 that they send making the

10 change?

11 Q Sure.

12 A Well, you know, I received that now.

13 Q Right. But between -- between '98 and '09, other than

14 that memo that is in your hand, you didn't receive anything

15 else in writing that you claim contained some kind of

16 promise by the City in regard to post-retirement healthcare

17 benefits; correct?

18 A Nothing pertaining to a promise. I know we had to sign

19 this what they call -- what they call it, the retiree

20 election form, we had to sign that every year.

21 Q Sure.

22 A You know that, right?

23 Q And I am going to ask you about that in a minute. I

24 appreciate that. I think Ms. Bloodgood asked you about it.

25 I sort of asked you this a moment ago, but one of the

1 things you were required to be familiar with in your
2 position as an assistant chief were the City's policies in
3 regard to personnel and other things; correct?
4 A Repeat that again.
5 Q Sure. Wouldn't you ---
6 A You said where?
7 Q Wouldn't you agree with me that it was always -- you
8 were always required to be somewhat familiar with the City's
9 policies on personnel issues and other issues?
10 A Sure. Uh-huh.
11 Q Okay.
12 A Well, you know, city policy they are like this
13 (motioning) this thick. So we really don't go through them
14 unless we have a good reason about something that is going
15 on in the department to seek out that information.
16 Q The key being you knew how to seek it out if you wanted
17 it?
18 A There you go. That is correct.
19 Q While you were employed by the City you never worked
20 for any other fire departments, correct?
21 A That is correct.
22 Q And while you were employed by the City from '74 until
23 2005 you never even applied for any positions with any other
24 fire departments, correct?
25 A That is correct.

1 Q If you would take a look at Plaintiff's Exhibit 2 which
2 I think you answered some questions about a few moments ago
3 which I think you identified as a letter you received in
4 2009 where you first got notice ---

5 A That is correct.

6 Q --- about the changes in the retiree benefits for the
7 City. You understood at the time you got that letter in '09
8 that you would not be receiving any kind of Medicare
9 supplement, correct?

10 A That is correct, yes.

11 Q And you may have sort of already said this. But I want
12 to be clear. You had a meeting with Ms. Ruth some time in
13 '09 after receiving that letter?

14 A After receiving it. That's correct.

15 Q And you would agree with me that you left that meeting
16 understanding that you would not be receiving any kind of
17 Medicare supplement once you reached age 65, correct?

18 A Well, she said she was working on it. So I -- I didn't
19 know ---

20 Q She didn't indicate to you it was going to be a
21 Medicare supplement the City paid for, did she?

22 A She said she working on getting the retirees a
23 supplement policy. Whether we were going to be paying for
24 it or how much we were going to be paying for it I couldn't
25 tell you.

- 1 Q You don't know?
- 2 A No, I don't know.
- 3 Q You mentioned during Ms. Bloodgood's questioning that
- 4 there are different levels of Medicare supplement coverage?
- 5 A That's correct.
- 6 Q And you have some familiarity with that obviously since
- 7 you have been purchasing it for several years now, correct?
- 8 A Yes, sir.
- 9 Q Those different levels of Medicare supplement coverages
- 10 you would also agree that they come with different costs
- 11 depending on, I am just going to term, the level of
- 12 coverage?
- 13 A That's correct.
- 14 Q Or the extensiveness of the coverage, correct?
- 15 A Sure. Uh-huh.
- 16 Q You would agree with me that no one with the City ever
- 17 made a promise to you, including the mayor, about what
- 18 particular type of Medicare supplement it was going to
- 19 provide to you; correct?
- 20 A That's correct.
- 21 Q Meaning they never specified what kind of Medicare
- 22 supplement was going to be provided to you by way of the
- 23 level of coverages that you now know about, correct?
- 24 A That is correct.
- 25 Q Chief Hood, let me show you Defendant's Exhibit 13.

1 And if you could just take a look at it and tell me two
2 things about it. Whether you remember receiving it in 2010
3 is really all I want to ask you about that letter.

4 A It is June 10th from the City of North Charleston. It
5 indicates the eligibility of healthcare coverage, City of
6 North Charleston, as a retiree, effective July 1, 2010.

7 Q All I would like to know is if you remember ever
8 receiving that letter, Chief Hood.

9 A Okay. Yes.

10 Q And, Chief Hood, finally I am going to show you what we
11 have marked as Defendant's Exhibit 1, which is a two-page
12 document. And all I would like you to do is look at those
13 two pages and tell me whether the initials on those two
14 pages and the signature on each page is yours.

15 (WHEREUPON, witness reviewed document.)

16 A Yes, sir.

17 MR. CONLEY: I believe that's all I have, Judge.

18 THE COURT: Redirect.

19 MS. BLOODGOOD: Just very briefly.

20 **REDIRECT EXAMINATION BY MS. BLOODGOOD OF CHIEF WILLIE HOOD:**

21 Q Chief Hood, when you retired did you expect to get as
22 good coverage as for health insurance as you had when you
23 were employed?

24 A I did.

25 Q And are you -- with the supplement that you can afford

1 now are you getting as good a coverage as you did when you
2 were employed?

3 A No, ma'am. Not quite.

4 Q And if you could pay more for your supplement you would
5 get better coverage now?

6 A I would.

7 Q And did you have good coverage when you were employed
8 by the City?

9 A I had very good coverage working for the City.

10 Q Okay. Thank you.

11 THE COURT: You may step down. Thank you very much.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: Thank you, Mr. Hood.

14 Do you have another witness?

15 MS. BLOODGOOD: Yes, Your Honor. I call Warren Newton.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please be seated. Sir, for the record if
18 you will please state your name spelling your last name.

19 THE WITNESS: It is Warren Newton. N-E-W-T-O-N.

20 **DIRECT EXAMINATION BY MS. BLOODGOOD OF WARREN NEWTON:**

21 Q Mr. Newton, I am Nancy Bloodgood. I took your
22 deposition. We have met once before. You are the finance
23 director for the City of North Charleston, correct?

24 A That is correct.

25 Q And you have held that position since 1997?

- 1 A That is correct.
- 2 Q When did you start working for the City?
- 3 A October 1997.
- 4 Q Okay. So you were the finance director in 1998 when
- 5 Mayor Summey proposed to Council that the City pay all or
- 6 part of a retiree's health insurance based on their years of
- 7 service, correct?
- 8 A I was the finance director.
- 9 Q And it is possible that this promise was not reflected
- 10 in the budget because it didn't have much of an impact on
- 11 the budget; is that correct?
- 12 A It is possible that it was not included in the budget?
- 13 Q Yes.
- 14 A It is possible.
- 15 Q Okay. So at some point for many years while you were
- 16 the finance director the City of North Charleston was
- 17 actually paying either 100 percent or a certain percentage
- 18 of retirees' health insurance based on their number of years
- 19 of service?
- 20 A We are self-insured. We pay claims. That is correct.
- 21 Q And what does self-insured mean?
- 22 A Self-insured means that the City pays claims, not a
- 23 premium to a third carrier like most insurance.
- 24 Q And since the City is self-insured can it also -- does
- 25 it have more authority to make the rules about its plan, its

1 insurance benefits?

2 A It has some flexibility. That is correct.

3 Q Okay. Now who is Bob Connella?

4 A He was the personnel director when I started work.

5 Q Okay. And as personnel director was Bob Connella

6 authorized to provide information to employees about payment

7 of retiree health insurance?

8 A He was authorized to distribute that information.

9 Q And who is Chris Ruth?

10 A Chris Ruth is the current actual HR director. The

11 department name changed from Personnel to HR.

12 Q And as human resource director was Chris Ruth

13 authorized to tell employees about the cost of retiree

14 health insurance?

15 A She was authorized to provide that information.

16 Q Now between 1998 and 2009 the City paid the cost of its

17 retiree health insurance on a pay-as-you-go basis, right?

18 A That is correct.

19 Q And then I am sure that in your capacity as finance

20 director you are familiar with what happened in about 2008

21 with GASB 45?

22 A I am.

23 Q And just briefly, not as a finance director but as a --

24 would you tell lay people what does -- what is GASB 45 and

25 what impact did it have on public entities.

1 A The primary impact was that it caused government
2 entities to start recognizing future long-term
3 liabilities. ---

4 Q Okay.

5 A --- of the benefits.

6 Q And when did the City first know that GASB 45 was
7 coming down the pike?

8 A GASB typically puts out pronouncements and exposure
9 drafts and those types of information. 2006 probably was
10 the first time that we thought it was coming down the pike.

11 Q Okay. And when did the City start preparing for
12 GASB 45?

13 A 2008.

14 Q Now and as a result of GASB 45 the City of North
15 Charleston then was required to account for its -- the
16 payment of the insurance of its retirees as a contingent
17 liability, correct?

18 A It was required to record it. That is correct.

19 Q And when GASB 45 became law, the City set aside 6.5
20 million to meet its health insurance obligations to all of
21 its employees; correct?

22 A Rephrase that question, please.

23 Q Yes. When -- in about 2009 or -- did the City as a
24 result of GASB 45 set aside approximately \$6.5 million to
25 meet its obligations, its insurance obligations, to its

1 employees?

2 A That was the original actuarial estimate, 6.5 million.

3 Q Okay.

4 A But the City never set aside that amount of money.

5 Q What did it set aside?

6 A It set aside a little bit over \$2 million.

7 Q And that was for all of its employees?

8 A That is correct.

9 Q How many employees are in the City approximately?

10 A Currently now it is about 1,100.

11 Q Okay. And is that a one-time cost, or is it added to

12 each year?

13 A It is an annual required contribution, and what they

14 call it is ARC.

15 Q Okay. So every year they put in two million; is that

16 correct?

17 A That is what you are required to do. You don't have to

18 put in just that amount. You could put in more if you

19 need -- or want.

20 Q Okay. And the six million figure may have come from

21 the fact that it was being done for three years, possibly,

22 when I took your deposition; is that possible?

23 A That is not where the 6.5 million figure came from.

24 Q Okay. Where did that come from?

25 A The actuaries initially provided calculations of what

1 our ARC would be based on the existing benefits that were
2 being offered.

3 Q Okay. You are using a word, ARC?

4 A Annual required contribution.

5 Q Okay. Thank you.

6 A The annual required contribution was estimated at that
7 time based on the current benefits to be in excess of 6.5
8 million a year.

9 Q Okay. But it actually only ended up being two million?

10 A That is correct.

11 Q And since 2009 has the City put aside at least two
12 million a year for insurance?

13 A We put aside whatever the annual required contribution
14 has been. It has not always been two million. It has been
15 anywhere from about a million-and-a-half to two million.

16 Q So the most the City has ever put aside -- and this is
17 for all 1,100 employee, would be two million?

18 A That's correct.

19 Q And sometimes it is done less?

20 A That is correct.

21 Q And what is the City's annual budget right now?

22 A One hundred twenty million.

23 Q One hundred twenty million. And were you aware that in
24 2009 there were only about 67 retirees who were receiving
25 subsidized insurance?

1 A I am.

2 Q So that is 67 out of 11- -- I know there might have
3 been less employees there, but say there were 1,000
4 employees; the retirees are actually a small percentage,
5 relatively small percentage, of the insurance cost for the
6 City; correct?

7 A They are a small percentage. But the annual required
8 contribution is calculated based on all employees, not just
9 the retirees.

10 Q Right. Was the payment of the health insurance for
11 employees, including the retirees, the only City program
12 affected by GASB 45?

13 A To my knowledge that is correct.

14 Q And there was a document shown to you during your
15 deposition which we have marked as Plaintiff Exhibit 9. And
16 I am going to show that to you again. What is that
17 document?

18 A This is a discussion about the current plan and
19 proposed plan options ---

20 Q And ---

21 A --- associated with ---

22 Q --- I understand the document was created in about
23 2009?

24 A That is correct.

25 Q Did you prepare this document?

1 A I assisted. But I don't believe I was the sole person
2 to prepare it.

3 Q Okay. And this document indicates that the proposed
4 plan was that retirees with 30 or more years of
5 experience -- years of service would pay 25 percent but
6 that retirees in the plan by 6/30/09 will be grandfathered
7 under condition -- existing conditions and enjoying
8 post-sixty-five benefits for life. So there was a proposal
9 that the existing retirees prior to 6/30/2009 be
10 grandfathered, correct?

11 A That was an option on that report. That was also one
12 of the options. The second option was that they would not
13 receive it.

14 Q Okay. And there were other options that the City had
15 in order to try to realize this two million dollars or
16 save -- find the two million dollars to put aside other than
17 on the backs of the retirees, right?

18 A It is not solely on the retirees. It is also including
19 all employees who are future employees for retirement.

20 Q Okay. And the current employees in North Charleston
21 pay nothing for single coverage health insurance, right?

22 A That is correct.

23 Q And they pay a little bit for dependent health
24 insurance, correct?

25 A That is correct.

1 Q Were you aware of the different options discussed by
2 the City about how to balance the budget in 2010 when they
3 were faced with GASB 45?

4 A I am.

5 Q And what were some of the other things that the City
6 could have done other than stop paying the retiree health
7 insurance benefits for the retirees?

8 A We could have looked at other options of other types of
9 benefits for reduction purposes as well.

10 Q Or could you have gotten the money from not building
11 capital projects?

12 A Likely not. Certain revenues used for capital projects
13 are not strictly available for general operation proceeds.

14 Q Okay. Could the City have discontinued paying the
15 total cost of the current employees' health insurance?

16 A That certainly could have been one of the options.

17 Q And they could have discontinued or made the employees
18 pay a little bit of the insurance that they got from the
19 City?

20 A That could have been one of the options as well.

21 Q And there could have been a different plan for retirees
22 who had already retired in 2009 than there was for current
23 employees, correct?

24 A There was regarding how much ---

25 Q So ---

1 A --- was paid. Correct.

2 Q And there were several options that the City had?

3 A There were several options. That is correct.

4 Q And the City could have cut its budget in other places,
5 correct?

6 A Certainly.

7 Q Now are you -- I know you are the finance director.
8 Are you familiar with the personnel policies at the City?

9 A Reasonably.

10 Q And are you familiar that the personnel policies do
11 not -- do not appear in the City of North Charleston's code;
12 they are rather taken out of the code and done by executive
13 order?

14 A That is correct.

15 Q And it is the mayor who is in charge of personnel, not
16 City Council; correct?

17 A I am not sure your question.

18 Q Do you know -- do you know if the mayor is in charge of
19 the personnel policies for City employees?

20 A From an executive order standpoint he has the right to
21 make those. That is correct.

22 Q Okay. Have you ever reviewed a document that was
23 previously marked as Defendant's 3 which is that 1984
24 ordinance -- okay, well, let me just ask you this. I have
25 another copy I can show you. Have you ever seen ---

1 THE COURT: Do you want the original?

2 MS. BLOODGOOD: The 1984?

3 THE COURT: Yes.

4 MS. BLOODGOOD: Thank you. There it is.

5 Q Let me hand you the exhibit. And have you ever seen
6 that ordinance before?

7 A I have.

8 Q You have. Okay. And this is an ordinance from 1984
9 before you started working for the City, okay.

10 A That is correct.

11 Q But at the -- and it indicates that employees who --
12 and I am just looking at the Fire Department part. On 1
13 A(1)(B) if they have worked in the Fire Department for 30
14 years they can retain their insurance under the group's --
15 the City's group plan, correct?

16 A They are able to retire after 30 years.

17 Q Yes. And then if you look up at "A" it says upon
18 retirement from the City employees who meet the requirements
19 listed below have the option to retain ---

20 A Retain. That is correct.

21 Q --- insurance under the group plan?

22 A That is correct.

23 Q And then we also had a document that we marked as
24 Plaintiff's 1 which is the letter from in 1998 from the
25 mayor to the finance committee. You may have that in front

1 of you. Number one.

2 A This one?

3 Q Yes. And that letter says that employees with 30 years

4 will have 100 percent of their retiree health insurance

5 paid, correct?

6 A Correct.

7 Q And then it -- this is more generous in 1998; the mayor

8 is also bringing in people with 15, 20, 25 years and giving

9 them an additional benefit; correct?

10 A Correct.

11 Q And then the exhibit that you looked at before 1984,

12 which is Defendant's 3, on the bottom of the first page

13 there is a statement that coverage will terminate upon

14 failure of the retiree to make the required advance payment,

15 termination of the City's group plan, or if it is in the

16 best interest of the City?

17 A Correct.

18 Q If you would look at Defendant's 5, which is the

19 mayor's executive order, on Page 17 of 27, that same

20 language from this ordinance is picked up by the mayor and

21 put into his executive order on personnel policies on three,

22 isn't it? If you will look in the middle of ---

23 A Yes, ---

24 Q --- Paragraph 3?

25 A --- that is correct.

1 Q The exact same language. Okay. So there is nothing
2 contradictory about ---

3 THE COURT: What number was that; Defendant's what?

4 MS. BLOODGOOD: That was on Page 17 ---

5 THE COURT: I mean the number.

6 MS. BLOODGOOD: Yes.

7 THE COURT: Defendant's Number.

8 MS. BLOODGOOD: B -- oh, I'm sorry. Defendant's 5.

9 THE COURT: Okay. Thank you.

10 Q And also I noticed in the City's current ordinance,
11 which has been marked as Defendant's 6, that Section 286
12 says that -- it is entitled who may draw on City's funds,
13 any City funds deposited shall be subject to the joint order
14 of the mayor and the finance director.

15 Does that mean if the mayor wants to spend funds from
16 the City he can do so with your ---

17 A Where are you referring to? I apologize.

18 Q I am going to -- it is Defendant's 6. I will hand it
19 to you.

20 A Okay.

21 Q It is probably on your -- here it is. Sorry. If you
22 would turn -- this is not the whole North Charleston code.
23 I got it off line. But the part that I am interested in
24 2.86 in Defendant's 6. And that is on Page 3 of 4.

25 If you go into -- it is about six pages in. And on the

1 top right-hand corner it says Page 3 of 4.

2 A Yes.

3 Q And it says that City funds deposited shall be subject
4 to the joint order of the mayor and the finance director.
5 Does that mean that if the mayor wants to spend money he and
6 you can approve him spending money?

7 A It says jointly.

8 Q Right.

9 A And in the absence of one or the other it has to be the
10 finance committee chairman.

11 Q Right. Thank you.

12 I don't have any other questions. Thank you.

13 THE COURT: Cross-examination.

14 **CROSS-EXAMINATION BY MR. CONLEY OF WARREN NEWTON:**

15 Q Good afternoon, Mr. Newton.

16 A Good afternoon.

17 Q Ms. Bloodgood actually covered many of the things I
18 probably would have asked you about. But I want to pick up
19 and show you what we have marked as Defendant's Exhibit 9
20 and ask you to first look at it and identify for me what it
21 is. And then I have some questions for you about it.

22 A This is the adoption of -- in 2009 of the post-
23 employment plan and the creation of a trust document and the
24 depositing of those funds.

25 Q Can you tell the court in general how the post-

1 retirement health plan benefit that is Defendant's Exhibit 9
2 came about?

3 A As a result of taking a look at the impact of GASB 45
4 and the budgetary implications to the City of North
5 Charleston.

6 Q And what were those budgetary implications in
7 particular?

8 A We had a professional study done by an actuarial group
9 by the name of A-on. As many government entities would have
10 been during that time period, to determine what the impact
11 of GASB 45 would be to the recognition of future liabilities
12 for the City of North Charleston for providing these
13 benefits.

14 And as I mentioned earlier, the initial recognition for
15 the existing benefits being provided would have created over
16 a six-and-a-half million dollar annual impact to the budget.
17 And that was not a sustainable figure.

18 So we had to look at other options. And those options
19 were modifying the benefits and creating this particular
20 trust so that we could fund the plan moving forward.

21 Q This may sound kind of the bizarre to you, but you
22 mentioned a moment ago the six-and-a-half million dollar
23 contribution or six-and-a-half million dollar funding level
24 that GASB 45 would have required -- or did require, was not
25 sustainable by the City. Those are your words.

1 A That is correct.

2 Q Can you explain to the court why as the finance
3 director you saw that as not sustainable for the City?

4 A The actual ---

5 THE COURT: Let me ask -- you said six-point-five. I
6 thought he said earlier the actual figure wasn't but
7 somewhere between two-point-five and three. The actuary in
8 preparations said six.

9 MR. CONLEY: I can ask him to clarify perhaps.

10 THE COURT: Please clarify it. Because I thought he
11 said in the actuality it was somewhere -- running somewhere
12 between two-point-five million and three; whereas the
13 actuary is a higher before they implemented it with -- to
14 come up with the option was six million -- six-and-a-half
15 million. Which is it?

16 THE WITNESS: The figure of six-and-a-half million in
17 excess, if we would have retained the same benefits we were
18 providing. Meaning benefits for life, beyond Medicare
19 eligible age.

20 One of the options was to cease benefits at Medicare
21 eligible age, which greatly reduced the future liabilities
22 that the City would have to recognize. Therefore, the
23 annual contribution they were making to that plan going
24 forward since 2009 had been in the range of one-and-a-half
25 to two million.

1 THE COURT: Because at 65 you transfer over to
2 Medicare.

3 THE WITNESS: That's correct.

4 THE COURT: Now was the issue of supplemental payments
5 for supplemental to pick up the 20 percent even discussed?

6 THE WITNESS: It was ---

7 THE COURT: Of part of that 6.5 million?

8 THE WITNESS: It was discussed that supplemental
9 policies would be provided for employees at a cost to the
10 City. But it was never approved by the Council ---

11 THE COURT: I would assume when they went to Medicare
12 80 percent of your liability would be gone.

13 THE WITNESS: That is correct.

14 THE COURT: Okay. So we would be talking about 20
15 percent, not 80 percent. And how would that affect the 6.5
16 million?

17 THE WITNESS: It greatly reduced the 6.5 million,
18 stopping the benefits being provided at age 65. But, again,
19 we are having to consider not just retirees but all
20 employees ---

21 THE COURT: I understand. All -- everybody on the
22 plan.

23 THE WITNESS: Right. So our future liabilities went
24 from somewhere in excess of \$100 million under the existing
25 plan to about 30 million. And you can amortize that over

1 about a 30-year period according to GASB 45 rules.
2 THE COURT: Over 30 years?
3 THE WITNESS: That's correct.
4 THE COURT: Okay. That is the actuary average ---
5 THE WITNESS: That is actuary ---
6 THE COURT: --- of life ---
7 THE WITNESS: --- calculations.
8 THE COURT: --- expectancy of people involved?
9 THE WITNESS: That is why it comes out to about a
10 million-and-a-half or two once you take in claim's costs
11 that you are having to pay on an annual basis as well.
12 THE COURT: All right. Was there any consideration at
13 all on the people that were retired grandfathering them in?
14 THE WITNESS: To allow ---
15 THE COURT: I understand ---
16 THE WITNESS: To allow ---
17 THE COURT: --- there were options for Council. But
18 was it an actuary to consider that at all?
19 THE WITNESS: To allow the ---
20 THE COURT: The understanding of 6.5 million.
21 THE WITNESS: To allow benefits beyond Medicare
22 eligible age?
23 THE COURT: No. No. At 65 and the supplemental and
24 life expectancy of those individuals to grandfather them in.
25 THE WITNESS: It was not considered from the standpoint

1 of providing the cost for the supplemental package. That is
2 correct.

3 THE COURT: Okay. All right. Go ahead.

4 Q Has the City ever provided, while you have worked for
5 it since late '97, ever provided a supplemental Medicare
6 benefit to any retired employees?

7 A Not at a cost to the City. There's been policies made
8 available for employees' option at their cost. But the City
9 has never provided a supplemental Medicare package at their
10 cost.

11 Q The Defendant's Exhibit 10, which you answered your
12 questions about, was that plan approved by City Council?

13 A It was.

14 Q And let me show you what we have marked as Defendant's
15 Exhibits 7 and Defendant's Exhibits 8. I think Defendant's
16 Exhibit 7 is a copy of the 2009 budget workshop minutes for
17 Council. And I think the other exhibit is the subsequent
18 Council meeting that occurred where the budget was approved
19 in 2009. Is that -- is that accurate?

20 A I am familiar with these documents. That is correct.

21 Q And those two exhibits would incorporate the process
22 that went on at the Council level in regard to approving the
23 post-retirement healthcare plan that is affect now at the
24 City, correct?

25 A That is correct.

1 Q I am going to ask you to take a look at Defendant's
2 Exhibit 2, Mr. Newton. I believe Defendant's Exhibit 2 -
3 and correct me if I am wrong - are some workshop minutes of
4 the City Council finance committee from 1998?

5 A It appears to be, yes, sir.

6 Q And just for point of clarification, at the City of
7 North Charleston since you have worked there including 1998,
8 does the City Council finance committee include all members
9 of City Council?

10 A It does.

11 Q The exhibit you are looking at now that are the 1989 --
12 1988 workshop minutes, do those reflect the adoption in '98
13 of the implementation, if you will, of the City's plan to
14 pay for part of or reduce the cost of what the retirees
15 would pay into the City's healthcare plan?

16 A Did it take into consideration that?

17 Q Yes. I think if you look on the last page of the notes
18 of that meeting or maybe the next to the last page there is
19 some mention of ---

20 A Information was distributed providing health insurance
21 for retirees.

22 Q And subsequent to that workshop what would have
23 occurred with that item; would the same thing have occurred
24 that occurred in 2009, it had then gone before the full City
25 Council for approval?

1 A That is correct.

2 Q And is that what you remember occurring in 1998?

3 A That is what I remember. Correct.

4 Q The monies or the funds that would have been used in
5 '98 and even subsequent to '98 to fund or underwrite or
6 supplement that new benefit that was being provided to
7 retirees, is that -- is that a cost that is included in the
8 City budget?

9 A It is. It is a pay-as-you-go cost.

10 Q And from that aspect, just very briefly tell us how it
11 is included in the budget as a pay-as-you-go item.

12 A It would be included in the overall premium cost that
13 is estimated, budgeted, for health insurance in various
14 departments.

15 MR. CONLEY: : I believe that is all I have, Judge.

16 THE COURT: All right, Mr. Newton, let me make sure I
17 understand. You look at this ordinance, which is
18 Defendant's Exhibit Number 3, which states that a retiree
19 may retain their life -- their health insurance; health,
20 life, and dental insurance; at the applicable rate in
21 nineteen -- I know you weren't there, but I assume from
22 prior testimony that would be zero, right?

23 THE WITNESS: And the possibility if they retired at a
24 certain age, that is correct.

25 THE COURT: Okay. And I am talking about single pay.

1 I am not talking about dependents. And that continued from
2 1984 until 2009; is that correct?

3 THE WITNESS: That is correct.

4 THE COURT: For approximately, what, ---

5 THE WITNESS: Twenty-five years.

6 THE COURT: How many years -- twenty-five years. And
7 that changed in 2009, correct?

8 THE WITNESS: That is correct.

9 THE COURT: Okay. And you started charging the
10 retirees at the applicable -- or percentage of applicable
11 rate based upon their total years of service?

12 THE WITNESS: That's correct.

13 THE COURT: Okay.

14 MS. BLOODGOOD: I just have one follow-up.

15 REDIRECT EXAMINATION BY MS. BLOODGOOD OF WARREN NEWTON:

16 Q You heard testimony that the cost of the supplemental
17 policy for the retirees is about 130 to \$140 a month?

18 A Yes.

19 Q Which is about 17 or \$1,800 a year.

20 A Okay.

21 Q And their life expectancy I will represent to you - you
22 can Goggle it - is about 10 years. So this is going to --
23 these four people is going to cost the City maybe \$72,000
24 total, which is a very very small percentage of a 120
25 million budget; isn't that ---

1 A It is. But, again, you have to remember it is not just
2 the retirees. It is all current employees you have to
3 factor in that supplemental cost as well.

4 Q Do you know that current -- that a City can change the
5 benefits of current employees because it has no obligations
6 to them, contractual obligations?

7 A You can.

8 Q You can; you can change it from year-to-year?

9 A That's correct.

10 Q City of Charleston could have decided twenty years ago
11 we are going to make you pay 10 percent, 20 percent?

12 A That's correct.

13 Q But you understand that the retirees are no longer
14 current employees of the City; they retired, and the City
15 started making its promise and then stopped; right?

16 A Making its promise on supplemental?

17 Q Well, paying -- no, just paying until they were 65.

18 A That's correct.

19 Q And then we never got to the point where they could
20 get ---

21 A You were talking about supplemental ---

22 Q --- the supplemental.

23 A --- so I just wanted to make sure. That's correct.

24 Q So you understand there's a difference with how a City
25 can treat current employees versus retirees?

1 A I recognize that.

2 Q Okay. Thank you.

3 THE COURT: Mr. Newton, thank you so very much.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you very much.

6 How many more witnesses do you plan on having?

7 MS. BLOODGOOD: Just one, Your Honor. One.

8 THE COURT: Who?

9 MS. BLOODGOOD: The mayor.

10 THE COURT: The mayor?

11 MS. BLOODGOOD: Yes, sir.

12 THE COURT: Well, I anticipate the mayor may be

13 lengthy; so we are ---

14 MS. BLOODGOOD: He may.

15 THE COURT: --- going to adjourn at five o'clock and

16 start back in the morning at 9:30.

17 MS. BLOODGOOD: Okay.

18 (WHEREUPON, break was had for the evening, 10/18/17, 5:00

19 p.m. Continued scheduling discussions were had.)

20 (WHEREUPON, bench trial resumed 10/19/17, 9:41 a.m.)

21 (WHEREUPON, the witness was duly sworn.)

22 THE CLERK: Please state your full name for the record,

23 spelling your last name for us.

24 THE WITNESS: Keith Summey. S-U-M-M-E-Y.

25 **DIRECT EXAMINATION BY MS. BLOODGOOD OF MAYOR KEITH SUMMEY:**

- 1 Q Good morning, Keith; ---
- 2 A Good morning.
- 3 Q --- Mayor Summey. You sat here through the testimony
- 4 yesterday. Do you agree that the City of North Charleston
- 5 operates over -- under the mayor council form of government?
- 6 A It is classified as a strong mayor form of government,
- 7 yes.
- 8 Q Okay. And under that form of government and a strong
- 9 mayor form of government you are the chief executive
- 10 officer, correct?
- 11 A Correct.
- 12 Q And all City department heads report directly to you?
- 13 A Yes.
- 14 Q And as the finance director, Mr. Newton, testified
- 15 yesterday you can draw on City funds in conjunction with
- 16 him; correct?
- 17 A I can draw on the City funds that are allocated to be
- 18 drawn on, yes.
- 19 Q And you hire and fire the finance director, correct?
- 20 A Correct.
- 21 Q And you establish all personnel policies through
- 22 executive order, correct?
- 23 A After they are run through Council.
- 24 Q You alone have authority to establish personnel
- 25 policies, correct?

1 A Personnel policies as far as conduct and things of that
2 nature, yes.

3 Q And -- hold on one second. The code of ordinances that
4 is found online was yesterday marked as Defendant's 6. And
5 let me just ask you if you agree with this: It says in
6 two -- in Section 2-176, the mayor shall be responsible for
7 establishing personnel policies through executive order and
8 shall notify City Council of all changes to the policies at
9 least ten days prior to such changes; correct?

10 A Yes.

11 Q So you only have to notify them after you make changes
12 to the policy?

13 A As long as it is not involving anything financial.

14 Q And Defendant's 5 was an exhibit that was shown
15 yesterday. And I will show it to you now. It is the
16 executive order from 2004. Are you familiar with that
17 order?

18 A Yes.

19 Q Okay. And on the first page, the fourth whereas, the
20 last sentence says that you are conferred as mayor of the
21 City all duties and responsibilities regarding personnel
22 matter including but not limited to employee hiring,
23 supervising, terminating, and discipline; correct?

24 A Correct.

25 Q And on the second page at the top it says that the

1 policy set out in this executive order supplement and
2 supersede all other policies relating on the same subject.

3 Do you agree with that?

4 A Yes.

5 Q And then we established yesterday that the program that
6 you implemented in 1998 where you would let retirees with 15
7 years, up to 30 years, get either reduced cost or free
8 retiree health insurance?

9 A Correct.

10 Q You put that into the executive order in 2004 on
11 Page 17 of 27. And the pages are numbered on the bottom.
12 You can read Page 17 to 27.

13 A I have got it.

14 Q It is a little confusing. If you will look at the top
15 of Page 17 to 27, under four. Is that the same discounted
16 cost of insurance benefits that you proposed in 1998 ---

17 A Yes.

18 Q --- that was found in your executive order?

19 A Yes.

20 Q Okay. And also on this page would you agree with me
21 that the language about when coverage will terminate, three
22 instances, either failure of the retiree to make advance
23 payment - and I am looking at Paragraph Number 3 right now -
24 or termination of the City's group plan, or if it in the
25 best interest of the City, is the same language that was in

- 1 the 1984 ordinance?
- 2 A Correct.
- 3 Q You also by -- pursuant to the city ordinance are
- 4 authorized to delegate your personnel responsibilities to
- 5 the personnel director, right?
- 6 A Correct.
- 7 Q Now you first took office as mayor of North Charleston
- 8 on October 7th, 1994 ---
- 9 A Right.
- 10 Q --- to fill an unexpired term, right?
- 11 A Correct.
- 12 Q And when you became mayor you responded to what some
- 13 employees wanted, which was healthcare after they stopped
- 14 working for the City; right?
- 15 A Yes.
- 16 Q And so you looked at what had to be done in the area
- 17 and what you could offer, right; and you wanted to help
- 18 those people who had dedicated a lot of time to the City,
- 19 didn't you?
- 20 A Yes.
- 21 Q And you also wanted to be more competitive in the
- 22 marketplace for hiring employees, didn't you?
- 23 A That wasn't really part of the decision-making process.
- 24 Q Okay.
- 25 A People that -- if I can add to that. People that -- 22

1 years old come to work as a police officer aren't thinking
2 anything about retirement. They are more concerned about
3 pay, what have you.

4 It was an attempt to acknowledge the service of those
5 people who had performed in a City that was very young and
6 had not really had a lot of people that had been eligible.

7 Q And I understand that your emphasis would be on
8 retaining the trained employees, ---

9 A Correct.

10 Q --- the ones with discipline. But you also wanted to
11 be competitive in the marketplace for hires, right?

12 A Yes. Always.

13 Q And so you proposed that the City pay some or all of
14 the cost of retirees' healthcare insurance based on number
15 of years, starting with 15 up to 30; and that was your
16 proposal, correct?

17 A Yes.

18 Q Now would you -- this policy that I showed you before,
19 your executive order that we have marked as Defendant's 5,
20 do you have that in front of you?

21 A Yeah, which page?

22 Q Well, just the top. Let's look at the top.

23 A Top. Okay.

24 Q It is called an executive order establishing personnel
25 policies for City employees, ---

1 A Right.

2 Q --- correct? And would you agree with me that
3 employees are people who are currently working for the City?

4 A Yes.

5 Q Retirees who have retired from the City are not
6 employees of the City, are they?

7 A Correct.

8 Q And so your personnel policies only apply to current
9 employees, correct?

10 A Correct.

11 Q And your executive order only applies to current
12 employees?

13 A Correct.

14 Q Did it occur to you that you had an obligation to
15 fulfill the promises you had made to persons who were no
16 longer employees? And I am now talking in 2009. I'm sorry.

17 A Okay. But I think what we read just a while ago that
18 everything is subject to change. That is in every document
19 that we put out. And as long as we are in a financial
20 status that we can do things. But everything is subject to
21 change.

22 Q Everything is subject to change for current employees?

23 A Everything is subject to change as far as providing the
24 services or the insurance, anything -- it is -- it is a
25 policy. That policy affects anything that is revenue that

1 comes out of the City.

2 And if Council disapproves the revenue coming out of
3 the City then the policy changes.

4 Q In the policy that we have marked as Defendant's 5,
5 which you said only applies to current employees, this
6 policy did not apply to people who were no longer working
7 for the City in 2009; correct?

8 A Um, that would be a question my lawyer would have to
9 answer.

10 Q Okay. And that is fine. If you don't know the answer,
11 that is fine.

12 And my question to -- so at the time, in 2009, did you
13 make any differentiation in your mind between employees who
14 were covered under this policy, current employees, and
15 people who were no longer working for the City, the
16 retirees?

17 A No.

18 Q There also was a document that was marked as
19 Plaintiff's 1 which was the letter from you to the finance
20 committee.

21 A Correct.

22 Q Are you familiar with that letter?

23 A Yes.

24 Q And it was prepared at your direction, wasn't it?

25 A Correct.

1 Q And you authorized that the letter go to the finance
2 committee in your capacity as mayor, didn't you?

3 A Yes.

4 Q In fact increasing health insurance, giving free health
5 insurance for retirees who had worked more than 30 years, I
6 think you described it in your deposition as your baby;
7 right?

8 A Yes, it was my idea.

9 Q Now were you aware at the time that retirees who had
10 worked 30 years already had the ability and were retaining
11 their insurance through the City?

12 A Yes.

13 Q And even though there was an ordinance in effect, at
14 the time you had the authority to do more than that
15 ordinance; didn't you?

16 A As long as it was not anything financially -- anything
17 financially has to go before the Body.

18 Q Well, in 2009 you extended the benefit of free
19 insurance from people who had worked 30 years to people who
20 had worked 15, 20, 25, and offered the supplement when they
21 turned 65, and continued allowing their dependents to be on
22 the insurance; right?

23 A Correct.

24 Q Okay.

25 A And that was with the approval of Council because they

1 have ten days to respond, once I put an order out, ---

2 Q Okay.

3 A --- in the negative.

4 Q So you put the order out, and ten days later they did
5 not fuss about it?

6 A Correct.

7 Q Okay. And but your order didn't conflict with
8 previous -- you weren't violating any ordinances when you
9 put your executive order out, were you?

10 A I don't think I was violating any ordinances. I was
11 putting a potential extra financial strain on the City.

12 Q Right. Because you were providing the benefit to more
13 people?

14 A Correct.

15 Q And was the reason for that, as has been testified,
16 that you wanted to reduce turnover and retain your older
17 employees; or one of the reasons?

18 A Well, I think it opened us up to hiring people that had
19 experience that were not going to come in and work for 30
20 years but might work for 15 for us.

21 Q And so after you made the proposal in 1998 you did tell
22 City Council about it, correct?

23 A Correct.

24 Q And Council agreed to it, correct?

25 A Yes.

1 Q And then thereafter you went to the fire stations as
2 the mayor and told people about what would happen when they
3 retired if they stayed with the City for 30 years, ---

4 A Yes.

5 Q --- what benefits they would have, which would be:
6 Free insurance. When you turn 65 since Medicare pays 80
7 percent we will pick up the other 20; we will give you a
8 supplement. And you can keep your dependents on your
9 insurance. That was in 1998?

10 A Yes, up until you officially got to the age ---

11 Q Okay.

12 A --- of 65.

13 Q And you also would talk about that promise at luncheons
14 at fire stations ---

15 THE COURT: I'm sorry, Mayor, what did you say about
16 65? I'm sorry, I didn't hear you.

17 THE WITNESS: It was designed that it would be covered
18 until the employee got 65. Once that -- they would go to a
19 Medicaid supplemental. And in my belief it was not covering
20 dependents after that.

21 THE COURT: Okay. All right. Go ahead. I'm sorry.

22 Q And then sometimes you also went to luncheons at the
23 station?

24 A Yes. Occasionally.

25 Q And there you would also talk about the great benefits

1 that the City was giving to retirees, so you wanted people
2 to stay and work for you for longer? And when I say you I
3 mean the City of North Charleston.

4 A Talked about many things. And a lot of times that
5 would be one thing that was included in the conversation.

6 Q Okay. And then around 2009 you were told by your staff
7 that the promises that you had made in 1998 and been
8 fulfilling for 11 years were not going to be possible to
9 keep, correct?

10 A Correct.

11 Q And that was because of the GASB 45 that there was
12 going to have to be a different way of accounting?

13 A Correct.

14 Q Okay. Did you question your staff's numbers at all?

15 A Yes, I did.

16 Q What did you -- how did you question them?

17 A Well, first of all I asked for the documentation. They
18 brought the documentation to me. And then I relied very
19 heavily on my finance director and my legal team to give me
20 advice.

21 Q Okay. And did you know at the time there were only 67
22 retirees ---

23 A Yes.

24 Q --- that the City had?

25 A Uh-huh.

1 Q And at that time your work force was probably over a
2 thousand people in 2009?

3 A Yes.

4 Q And did you know at the time what the cost of the
5 supplemental Medicare policy was?

6 A They had those numbers, yes.

7 Q Were there any discussions about the fact that the
8 retirees needed to be treated differently because they had
9 already retired and a promise had been made to them so they
10 should be treated differently than current employees?

11 A It was discussed and then brought up that the --
12 everything that we put out and did said that it was subject
13 to change.

14 Q Is there any document that says everything is subject
15 to change other than your personnel executive orders?

16 A There is every document that effects personnel says it
17 is a subject to change.

18 Q And personnel is for current employees?

19 A Correct -- well, for all employees.

20 Q For instance -- right. For instance, an ordinance is
21 not subject to change unless you amend it going through the
22 statutory and the code of North Charleston's procedure or
23 your repeal it; correct?

24 A Correct.

25 Q So there are some documents that are not subject to

1 change?

2 A They are subject to change. It is just a different
3 format how you change it.

4 Q Okay. And if you enter into a contract with somebody
5 you can breach the contract, but you might be liable for ---

6 A Correct.

7 Q --- the expenses associated with that breach, right?

8 A Yes.

9 Q And in 2009 when they -- when your staff was talking to
10 you about GASB 45 did you know what percentage of your
11 health insurance costs were being spent on those 67
12 retirees?

13 A We had that information. But it also gave us the cost
14 projected to the future as well.

15 Q For those 67?

16 A For everybody.

17 Q Okay. But if had decided, as you did, in your -- in
18 your subsequent letter that if any -- that the -- anyone who
19 retired prior to June 2009 would be treated differently than
20 anyone who retired after June 2009, that would affect your
21 numbers; wouldn't it?

22 A Yes.

23 Q Let me show you what we marked as Plaintiff's 3, which
24 is your May 4th, 2009, letter. Do you recognize that
25 letter?

1 A I have seen it, yes.

2 Q Okay. In fact, you agreed with and supported what was
3 in the letter; correct?

4 (WHEREUPON, pause to review of document.)

5 THE COURT: There are seven pages to Plaintiff
6 Exhibit 3. What are you asking him to agree to, all seven
7 pages or ...?

8 MS. BLOODGOOD: No, Your Honor. Plaintiff's 3 is only
9 one page.

10 THE COURT: Okay. Plaintiff's 3 is just one page.
11 Okay.

12 MR. CONLEY: Plaintiff's 2 I believe is ---

13 THE COURT: Pardon?

14 THE WITNESS: Yeah, I have got seven pages.

15 MS. BLOODGOOD: Oh, sorry.

16 THE COURT: Plaintiff's 3 that I have ---

17 MS. BLOODGOOD: Okay.

18 THE COURT: --- shows pages.

19 MS. BLOODGOOD: I have mine.

20 THE WITNESS: Okay.

21 MS. BLOODGOOD: I will give you the right one. Sorry.

22 THE WITNESS: All right.

23 MS. BLOODGOOD: Plaintiff's 2.

24 THE COURT: Okay. All right.

25 MS. BLOODGOOD: I have got my old numbering on it.

1 THE COURT: Thank you, ma'am. You were talking about a
2 letter.

3 Q Mayor Summey, Plaintiff's 2 is a May 4th, 2009, letter
4 that is signed by you. Are you familiar with this letter?

5 A Yes.

6 Q And it was prepared with your authorization, correct?

7 A Yes.

8 Q And did you agree with and support what was in the
9 letter?

10 A Yes.

11 Q Now in the letter on the second paragraph, first
12 sentence, it says a major change to retirees healthcare
13 benefits is necessary.

14 What you really needed was a major change for future
15 retirees, correct? Did you -- at that time in 2009 did you
16 need a major change for the 67 people who had already
17 retired?

18 A Sixty-seven, those and every other employee; yes.

19 Q It was mostly the future employees?

20 A Including the 67.

21 Q Because there was a concern that, as you state at the
22 end of the paragraph, employees are retiring at an earlier
23 age and living longer; right?

24 A Yes.

25 Q And that -- that refers to your current employees, not

1 the ones who already retired?

2 A Well, they retired at fifty some. They retired earlier
3 too.

4 Q And then it also says that in that same paragraph
5 funding retiree benefit obligations has become a major
6 concern for governments and private businesses.

7 But was it a major concern for the City of North
8 Charleston in 2009 that you at the time that you had 67
9 retirees who were participating in your insurance program?

10 A It was the growing number, yes.

11 Q Growing number of current employees?

12 A Correct.

13 Q In fact, you recall testifying in your deposition that
14 there were only a few people in 2009 who had retired from
15 the City?

16 A Correct.

17 Q And paying -- it wasn't really the retirees that were
18 the problem; it was all the people who were going to be
19 coming along because now you had a thousand -- more than a
20 thousand people in your City, correct?

21 A It was the policy, yes.

22 Q Did you consider, personally, increasing the cost of
23 healthcare for the current employees, all of those people
24 coming along, instead of the making the retirees on fixed
25 income have to pay out of their pocket for the supplement

1 policy and for insurance for their dependents?

2 A Our employees do now pay for full-family coverage.

3 Q Yeah. My question was in 2009 when you were proposing
4 and sending this letter to all of the retirees did you
5 consider making the current employees pay something more
6 rather than making the 67 people who had retired and were on
7 fixed incomes start paying for their supplemental policy?

8 A We started making all employees pay something.
9 Current. Not those that had retired.

10 Q In 2009 or after that?

11 A It was shortly after that.

12 Q Do employees get free health insurance now for single
13 coverage with the City?

14 A Single coverage is free. Family coverage is around 180
15 a month.

16 Q Okay. What was in it 2009 when you started it?

17 A Zero.

18 Q When did you start making the families pay?

19 A I don't remember the exact date. But ---

20 Q So it could have been after 2009?

21 A It has been going on for five or six years.

22 Q Okay. So this is 2017. So it has been going on since
23 maybe 2012, ---

24 A Correct.

25 Q --- '11 or '12? Okay. When you state in this letter,

1 in the third paragraph, in the middle in italics, once a
2 retiree becomes eligible for Medicare all healthcare
3 benefits provided by the City of North Charleston will
4 cease ---
5 A Correct.
6 Q --- did you have authority to say that?
7 A Yes.
8 Q You are absolutely sure of that?
9 A If Council did not question it.
10 Q Okay. But this -- and this was your letter, signed by
11 you; not Council?
12 A Correct.
13 Q But you felt like when you wrote the letter you had
14 authority ---
15 A Yeah, I did.
16 Q --- to say the benefits would cease?
17 A We had discussed it in committee.
18 Q Okay. And you felt that even if there was an ordinance
19 that said from 1984 that employees would be eligible to
20 retain their coverage, you had the authority in this letter
21 to tell them that all benefits would cease?
22 A Through the statement in that letter that said subject
23 to change.
24 Q Where does it say subject to change in this letter? I
25 didn't ---

1 A Not in my letter. In the letter from '94.

2 Q Okay, I am talking about the 2009 letter doesn't say
3 subject to change?

4 THE COURT REPORTER: I'm sorry, I didn't hear his
5 answer.

6 A It was the '94 letter that had subject to change on it.
7 In that policy.

8 Q Do you mean the '98 letter?

9 A Yes, ma'am.

10 Q In the '98 letter we have marked as Plaintiff 1. Is
11 that the letter that you are referring to? I think it is in
12 front of you.

13 A Yes.

14 Q Okay. Where does it say subject ---

15 A No, I was -- I am talking about the '84.

16 Q Okay, the '84 ordinance?

17 A The -- yes.

18 Q Okay. That is Defendant's 3. Do you have that in
19 front of you? I will give it to you. The '84 ordinance is
20 Defendant's 3. And where does that say that it is subject
21 to change? What do you mean by that?

22 A In all of our employee issues it says subject to
23 change.

24 Q Okay.

25 A Maybe not in this. Well, I guess under "D" the

1 insurance rate is going to be reviewed semi-annually and
2 adjustments may be necessary.

3 Q Okay. That is what you mean by subject to change, ---

4 A Right.

5 Q -- it could change the deductibles or the rate or how
6 much people pay?

7 A Or you could change even whether you are covered or
8 not.

9 Q Well, would you agree with me that an ordinance that
10 the City of North Charleston passes has to be amended in a
11 certain manner?

12 A Correct.

13 Q And it had to be repealed in a certain manner?

14 A Yes.

15 Q Let's look at Plaintiff's 9 that you testified about in
16 your deposition which is the -- Plaintiff's 9. Let me see
17 if I can -- I will hand it to you. Let me make sure my
18 numbers are correct. Yes, Plaintiff's 9. And this is
19 entitled City of North Charleston retiree health-care
20 benefits plan.

21 A Uh-huh.

22 Q And Mr. Newton had testified about it a little bit
23 yesterday. And previous testimony established that it
24 was -- this was prepared in about 2009. Is that your
25 recollection?

1 A Yes.

2 Q And it was prepared at your direction, wasn't it?

3 A Correct.

4 Q And it states that retirees who are in the plan by June
5 30th, 2009, will be grandfathered; correct?

6 A Yes.

7 Q It also says that post-65 benefits -- and I am reading
8 "A" and "B" on the bottom of the page now. Post-65 benefits
9 will be eliminated for retirees joining the plan on or after
10 July 1st, 2009; correct?

11 A Correct.

12 Q So people who were already in the plan, like the four
13 plaintiffs here, were -- you intended that they would be
14 grandfathered under existing conditions?

15 A That was my goal.

16 Q Okay. Because you wanted to reward the folks that had
17 been with the City for a long time, right?

18 A Any way that we can financially, yes.

19 Q Okay. And in fact you suggested ---

20 THE COURT: Let me interrupt you a second. What is the
21 date of Plaintiff's Exhibit Number 5, please?

22 MS. BLOODGOOD: Mr. Newton testified it was 2009.

23 THE COURT: 2009?

24 MS. BLOODGOOD: Yes.

25 THE COURT: Okay.

- 1 A Exhibit 5? Yes, I see it. Okay.
- 2 Q Mayor Summey, ---
- 3 A Yes, ma'am.
- 4 Q --- you are -- you had suggested grandfathering, hadn't
- 5 you?
- 6 A Yes.
- 7 Q So based on this Plaintiff's 9 that we looked at, if
- 8 you are working for the City and this comes out, you will be
- 9 better off retiring before June 30th, 2009, to be
- 10 grandfathered; wouldn't you?
- 11 A Yes.
- 12 Q And then as late as 2011 you are still discussing with
- 13 the retirees whether they would get supplemental policy and
- 14 be grandfathered, correct?
- 15 A In a conversation I had in a meeting with some of the
- 16 employees we discussed we would research to see if there was
- 17 anything we could do additionally to help.
- 18 Q Okay. And that was in about 2011?
- 19 A Yes.
- 20 Q And at that point the retirees who are the plaintiffs
- 21 in this case had retired, you have heard, in 2005, so they
- 22 were not yet at the point where they were being affected;
- 23 but in 2011 you were still researching and trying to see
- 24 what you could do for them?
- 25 A Yes.

1 Q And in fact, you told Mike Baxley that you wanted to
2 keep the promise and you would try to find a way to do so;
3 didn't you?

4 A I told him that we would research to see what is the
5 best that we could do to assist them, yes.

6 Q Okay. And you told the retirees at that meeting in
7 2011 that you appreciated where they were coming from,
8 right?

9 A Since I am of that age, yes.

10 Q You told them that you thought your original proposal
11 was great, correct?

12 A I thought that the original proposal was something that
13 I would love to see done and carried forward. But because
14 the financial conditions and changes in things forced upon
15 us as an opportunity City my first responsibility is the due
16 diligence of the budget.

17 Q But you really didn't have all of the facts when your
18 finance director came to you and said we have got to take
19 away the supplemental policy for the 67 retirees and get
20 their dependents off of our policy by when they turned 65,
21 did you?

22 A I was given all of the information, yes.

23 Q You were given the information as to what the cost
24 would be for the supplemental policies for those 67
25 retirees?

1 A No, I wasn't given the information on that cost because
2 it would probably be adjusted based upon the timing of their
3 retirement -- of the -- that. Because we all know insurance
4 goes up.

5 Q And you rely heavily on your department heads?

6 A For information, yes.

7 Q Yes. And in fact during your deposition you testified
8 that you didn't claim to be knowledgeable in any of your
9 departments because if you were you wouldn't need department
10 heads, right?

11 A Correct. That is in the day-to-day operations, yes.

12 Q Let's look again at Defendant 5 which is your executive
13 order that is in front of you. And we will look at Page 17
14 which is the summary in 2004 of the benefits that you were
15 going to give to the retirees.

16 Now there are three ways that a retiree would not get
17 the benefit that you promised them in 1998 and which is in
18 your executive order in 2004. That would be -- and this --
19 and I am looking at the middle of three, numeral number
20 three. It says coverage will terminate if the retiree fails
21 to make the required advanced payment.

22 Now is it the City's contention or your contention that
23 Chief Baxley or Chief Rissanen has failed to make the --
24 ever failed to make the payments for their wives when they
25 were on the City's policy?

1 A Not to my knowledge.

2 Q Okay. And there would be no advanced payment for Chief
3 Forner or Chief Hood because they have single coverage and
4 it is free, correct?

5 A Correct.

6 Q And then it could terminate upon termination of the
7 City's group plan. The City has never terminated its group
8 plan, has it?

9 A No. We have made changes. Our group plan actually is
10 self-insured.

11 Q Right. So you still have a self-insured group plan?

12 A Correct.

13 Q And then the last way states that if it is determined
14 to be in the best interest of the City. Can you define for
15 me what the best interest of the City is?

16 A When financial constraints come upon us, some we
17 create, a lot that are mandated and not created by us. For
18 instance, the retirement system now. We are going up to
19 semi-year for the next three years mandatory by the State.
20 Which means on every employee that is working we will now be
21 paying \$.16 on the dollar into a retirement program for
22 them.

23 Those things have to come out of the budget. There is
24 not easily funds that can be raised to cover that, so we
25 have to make adjustments within the system that we currently

1 operate.

2 Q And so that's what the best interest of the City means?

3 A Best interest of the City means that we have to operate
4 on the funds that we have available and we have to make
5 adjustments on policies that negatively affect our ability
6 to do that.

7 Q Okay. And where would I find the definition of best
8 interest of the City, meaning using funds that are
9 available?

10 A You just got it.

11 Q Okay. Have you ever seen the term, best interest of
12 the City, defined in any City document?

13 A No.

14 Q Who is the person or the entity that defines what is in
15 the best interest of the City?

16 A The Council makes the final decision.

17 Q Is that by majority vote?

18 A Yes.

19 Q Has majority of Council ever voted that the best
20 interests of the City are to stop the supplemental insurance
21 for the retirees that you had promised?

22 A By not appealing the executive order, yes. It is not
23 an open vote. But they have the right to bring it to the
24 Body.

25 Q So there was no majority vote of Council as to that

1 issue?

2 A No.

3 Q Is the decision of the City Council regarding what is
4 in the best interest of the City recorded in any fashion?

5 A I really don't know.

6 Q Is it documented in any manner?

7 A I don't know.

8 Q Can the decision be challenged or appealed?

9 A Within a ten-day timeframe.

10 Q Would you consider preventing excessive turnover of
11 personnel in the best interest of the City?

12 A Yes.

13 Q How about rewarding folks who have been with the City
14 for a long time, is that in the best interest of the City?

15 A Yes.

16 Q Is helping employees who have dedicated a lot of time
17 to the City in the best interest of the City?

18 A Yes.

19 Q Is being more competitive in the marketplace for hiring
20 employees in the best interest of the City?

21 A When it is feasible.

22 Q Is fulfilling your promises to the four plaintiffs in
23 this room, when we have already established that the cost
24 associated with fulfilling that promise is only a tiny
25 fraction of the City's budget, in the best interest of the

1 City?

2 A When it is feasible.

3 Q I don't have any other questions. Thank you.

4 THE COURT: Cross-examination.

5 **CROSS-EXAMINATION BY MR. CONLEY OF MAYOR KEITH SUMMEY:**

6 Q Good morning, Mayor Summey.

7 A Good morning, sir.

8 Q Mayor, in the question of you by Ms. Bloodgood the word

9 promise was made on a number of occasions. Do you remember

10 hearing that?

11 A Yes.

12 Q Do you understand the difference in a promise and an

13 ordinance?

14 A Yes.

15 Q Do you understand the difference in a promise and a

16 policy?

17 A Yes.

18 Q Did the City have ordinances and an ordinance regarding

19 post-retirement healthcare benefits?

20 A Yes.

21 Q Did the City also have a policy, which you have

22 discussed at some length, about post-retirement healthcare

23 benefits?

24 A Correct.

25 Q Did the City or you ever make any promise to any

1 retiree about their post-healthcare benefits, or did you
2 supply them with an ordinance and policies that were subject
3 to change about their post-retirement healthcare benefits?

4 A I discussed my desire to help. But none of that is
5 document guarantees of anything.

6 Q You were asked earlier about the meetings that you
7 would go to with fire department employees by way of example
8 and discuss benefits perhaps such as retiree healthcare
9 benefits?

10 A Correct.

11 Q When you would attend these meetings and talk -- and
12 talk to those employees, which might have included these
13 four plaintiffs, ---

14 A Correct.

15 Q --- were those discussions and the statements you made
16 promises or were they an explanation of the current benefits
17 the City was able to provide to its employees including and
18 retirees?

19 A Well, you have to -- it was an explanation of what we
20 had in place and were trying to put in place. The -- you
21 have to remember and look at the history of where we were at
22 that time.

23 In 1996, I believe it was, we merged the North
24 Charleston Public Service District with the City of North
25 Charleston. And it was not an easy task because they were

1 competitive in service. We took in the chief of the other
2 fire district. Brought him in. Maintained our chief in
3 control of all of those employees. We did not bring some of
4 those employees aboard.

5 We were also going through the 24 on, 24 off, going to
6 24 on, 48 off, that was involved with legal issues with the
7 fire service.

8 And so the cost of providing fire service to the
9 citizens of North Charleston has grown immensely. And that
10 in and of itself has an effect on the revenues that we have
11 to distribute for other -- other means.

12 Q But you understand the difference in a promise and an
13 explanation of what the current policies or ordinances are,
14 correct?

15 A Correct.

16 Q And when you would have these meetings with these four
17 plaintiffs or any other firefighters were you providing an
18 explanation of the current benefits and policies and
19 ordinances, or were you making promises about in perpetuity
20 to them as to what the City could or couldn't do?

21 A The only thing I could quote on was what we had in
22 place at the time.

23 Q You were first elected mayor what year?

24 A October the 7th, 1994.

25 Q And so sometime between 1994 and 1998 you came to the

1 conclusion that you wanted to see these increased healthcare
2 benefits for retirees by way of your recommendation in 1998
3 that Council approved allowing them to now receive a
4 discount if you will as to what they paid for that benefit
5 post-retirement, correct?

6 A That, and my goal was to get us in a more fair
7 competitive market with salaries and things of that nature.
8 We were behind. When I became mayor the mayor's salary,
9 full-time salary, was 60,000; and no department head was
10 allowed to make over what the mayor made. So my goal was to
11 bring us up to competitive standard as far as hiring,
12 supervision, and things of that nature.

13 Q And what you did in 1998, if you would look at
14 Plaintiff Exhibit 1, was you provided a memo to Council
15 about what you were proposing Council approve; correct?

16 A Correct.

17 Q My question to you, Mayor, is was that -- Plaintiff's
18 Exhibit 1, was that a directive by you to Council to approve
19 that; or was that a recommendation by you to approve it?

20 A It was a notice to let them know that it would be
21 funded in the budget. Which our budget passes before
22 July 1. This was written in May to the Body to let them
23 know this would be included in the budget. Which means
24 they'd have to approve the budget. And if they didn't
25 approve it in the budget, that it would not be there.

- 1 Q And what is the date on that letter, Mayor Summey?
- 2 A May the 13th.
- 3 Q Of what year?
- 4 A 1998.
- 5 Q Mayor, I am going to ask you to look at what has
- 6 previously been marked as Defendant's Exhibit 2 which are
- 7 North Charleston finance committee budget workshop minutes
- 8 from May 15th of 1998. I have got them in my hand, Mayor.
- 9 I am going to hand them to you.
- 10 A Okay.
- 11 Q I am going to ask you to first look at the first page.
- 12 And then I am going to ask you to turn to the last page.
- 13 Are you familiar with maybe not that -- those workshop
- 14 minutes in particular, but are you familiar with those
- 15 workshop minutes that are a byproduct of the financial
- 16 meetings; ---
- 17 A Correct.
- 18 Q --- is that correct?
- 19 A Yes.
- 20 Q And I think it has been pretty clear in the record, but
- 21 I want to ask you: While you have been the mayor of the
- 22 City of North Charleston has the Council Finance Committee
- 23 always consisted of the entire members of Council meeting;
- 24 all the members of Council served on the Finance Committee?
- 25 A Yes.

1 Q And was that the case in 1998?

2 A Correct.

3 Q So on May 13th, 1998, by way of your memo you made a
4 recommendation to Council that they make this modification
5 to the retiree healthcare benefits; correct?

6 A Yes.

7 Q And if you look at the last page of the workshop
8 minutes from May 15th of 1998 which -- what does it appear
9 to you Council or the -- I should say the Finance Committee,
10 which is Council, did they approve it or disapprove it?

11 A It was approved with one no vote by Councilman King.

12 Q And to your knowledge those funds to do that were
13 subsequently included in the City budget which was then
14 subsequently passed I assume ---

15 A Yes.

16 Q --- in June of 1998; is that your recollection?

17 A Yes.

18 Q Mayor, you were here when Mr. Newton testified
19 yesterday. And you would have heard Mr. Newton testify that
20 the City since he has worked there in 1997 has never
21 provided any kind of Medicare supplement to any retiree.
22 Did you hear that?

23 A Yes.

24 Q Is that your understanding too that at least since 1997
25 there has never -- to your knowledge there has never been a

1 Medicare supplement provided to retirees?

2 A To my knowledge, no, it hasn't.

3 Q I assume in 2008 or 2009 it came to your attention, as
4 Mr. Newton testified, that there were going to be some
5 changes as to how the City had to account for all of its
6 healthcare cost, not just retiree cost; is that right?

7 A Correct.

8 Q Do you remember how you became aware of that; did you
9 become aware -- become aware of that by way of Mr. Newton or
10 someone else?

11 A Mr. Newton brought it to my attention. And then we had
12 a committee meeting where we discussed it.

13 Q Mayor, I am going to first ask you to look at what's
14 been marked as Defendant's Exhibit 7 which are the special
15 budget workshop meeting minutes from Friday, May 1, of 2009.

16 Are those the type of minutes, again, that would
17 typically come out of a North Charleston City Council budget
18 workshop?

19 A Yes.

20 Q And do you -- or can you find within those workshop
21 minutes - and perhaps I can direct you to it - where this
22 issue of post-retirement healthcare benefits is actually
23 discussed at the meeting?

24 A I am sure it was. But if you will tell me the location
25 it would be easier.

1 Q I first want to ask you about the parts of the first
2 couple of pages that are in italics. Do you see those?

3 A Yes.

4 Q That appears to be - but you can confirm whether it is
5 or not - your actual recommendation to Council in May of
6 2009 about the upcoming budget for the next fiscal year,
7 correct?

8 A Yes.

9 Q And that is something you are required to do, as I
10 understand it, by law each year is propose a budget to City
11 Council. Is that accurate?

12 A Correct.

13 Q So this is something you have consistently done over
14 your years as mayor at the City of North Charleston?

15 A Any adjustments that they wished to make is done at the
16 workshop.

17 Q So if you would look at Page 2 of that document, Mayor
18 Summey; and if you go about two-third down the page you will
19 see a paragraph that is in italics. And it starts with the
20 words healthcare. Do you see that?

21 A Yes.

22 Q And what does that paragraph say?

23 A Healthcare costs are being reviewed and addressed in
24 other workshop timeframes, and overall reduction in
25 healthcare cost is included in the budget. The GASB 45

1 initiative must be factored into the 2009-10 budget, and
2 this will increase future costs for the creation of the
3 trust fund to assist the retired employees.

4 Q So is it your recollection that in the May 2009 budget
5 workshop that there was not only a recommendation by you as
6 to changes that might need to be made to retiree post-
7 retirement healthcare benefits but also it was a topic of
8 discussion at that workshop?

9 A Correct. I am going to ask you to look at Defendant's
10 Exhibit 8. Which I believe Defendant's Exhibit 8, Mayor
11 Summey, are the subsequent minutes of the actual City
12 Council meeting where the 2009, 2010, fiscal year budget was
13 approved by Council; is that correct?

14 A Yes.

15 Q And the budget that would have been approved at that
16 meeting would have been the same budget that was discussed
17 and approved at the workshop meeting we just discussed, in
18 May of 2009; correct?

19 A Correct.

20 Q Up until this point in 2009 the process you and I are
21 discussing here, the workshop meeting, the budgetary
22 approval by Council, is this a legislative function of the
23 City of North Charleston?

24 A Yes.

25 Q I mean these are not things you are just approving on

1 your own, are you?

2 A No.

3 Q These are not things you are dictating to City Council
4 that they have to approve, are you?

5 A No, we -- they are furnished with a request and then
6 what we recommend.

7 Q And these are items both in the workshop meeting and in
8 the subsequent budget meeting, you and I have discussed, in
9 2009 that Council actually voted on?

10 A Correct.

11 Q Mayor, I am going to hand you what I have marked as
12 Defendant's Exhibit 9 -- or what has been marked as
13 Defendant's Exhibit 9. And, Mayor, Defendant's Exhibit 9 is
14 the City of North Charleston post-retirement healthcare
15 benefits plan that was approved in 2009. Is that correct?

16 A Yes.

17 Q And I think it even has your signature on it. You
18 don't have to turn back and look, but I think it has your
19 signature on about six or seven pages back into it; is that
20 correct?

21 A Uh-huh.

22 Q Yes?

23 A Yes.

24 Q Is -- was -- is this the plan that was put into effect
25 in 2009 by the City?

1 A This is the plan that was approved through the budget
2 process and the funds that were set aside for personnel and
3 all of our -- anything involved with personnel or
4 retirement. And it was part of that plan, yes.

5 Q And if you look on what is essentially -- I think
6 the very last page of that document, which is down the
7 right-hand corner is Page 14 of 14.

8 A Correct.

9 Q It really sets out the benefits provided under the plan
10 as of July 1 of 2009, correct?

11 A Right.

12 Q This plan that you and I are looking at, including
13 Exhibit B to it, is something that was approved and passed
14 by City Council; is that correct?

15 A Correct.

16 Q And it was done that -- it was done because, one, the
17 funds to accomplish this had to come from where, Mayor?

18 A The budget.

19 Q And who has control of the City budget in the City of
20 North Charleston?

21 A Council.

22 Q Do you have control of the City budget in the City of
23 North Charleston?

24 A No, sir.

25 Q Is there any way that this plan that is contained in

1 this 2009 post-retirement healthcare benefits plan could
2 have been effectuated without Council approving the monies
3 to fund it?

4 A No, sir.

5 Q The implementation of this 2009 post-retirement
6 healthcare benefits plan, was that an administrative
7 function at the City of North Charleston; or was that a
8 legislative function of Council?

9 A Legislated by the Body.

10 Q Does the City of North Charleston City Council have to
11 approve a budget every year?

12 A Every year.

13 Q And do you have to approve a budget to it every year?
14 You have to make an approval for a specific budget every
15 year, correct?

16 A Yes, I have to.

17 Q And then it goes through this same workshop process
18 every year, correct?

19 A Right.

20 Q So there was nothing -- well, let me ask it in this
21 fashion. Was there anything different or unusual in 2009
22 about the way the budget workshop process took place and the
23 subsequent approval of City Council by the budget -- of the
24 budget in 2009?

25 A Right.

1 Q Yes?

2 A Yes. We -- the process works is that we meet with each
3 individual department to go over their requests. And out of
4 their requests we come with recommendations.

5 A lot of times if there is a couple of things,
6 something is going to have to be cut, we let the Department
7 go back and cut what they think they can do, live the best
8 without. And then they come back with their final budget.
9 We put it all together and then we go with a final budget
10 request for all of the City.

11 Q You were asked earlier about a meeting you had
12 involving yourself, I think Mr. Newton, Chief Rissanen, and
13 Chief Baxley; I think some time in 2011 was your
14 recollection; is that right?

15 A Yes.

16 Q Did you make any promises to either Mr. Baxley or -- or
17 Chief Baxley or Chief Rissanen during that meeting?

18 A That I would look into the information to see if there
19 were any things that could be done. And we did look and
20 see, but we really couldn't come up with anything.

21 Q During the questioning of you by Ms. Bloodgood the word
22 "you" and "the City" were sort of used interchangeably. The
23 things we have talked about with this 2009 change to City
24 post-retirement healthcare benefits, is that something that
25 you effectuated or it that something the City, i.e. City

1 Council, effectuated?

2 A City Council effectuated upon my recommendation. But
3 nothing works unless it is approved by the Body.

4 Q And it doesn't work in this instance because there
5 would be no funding for it; is that correct?

6 A Correct.

7 Q Mayor, you heard also because you were here yesterday
8 various statements made that are attributed to you that you
9 made at these meetings with firefighters such as - I may be
10 misquoting this a bit, but I think I am pretty accurate -
11 you have a honey on a deal, you have a sweet deal.

12 Do you have any recollection of making those kinds of
13 statements?

14 A I probably said it was as good of a program as any in
15 the area, yeah.

16 Q I would assume as the mayor you weren't and haven't
17 been bashful about having the current benefits that the City
18 was able to offer, whether it be employees or retirees?

19 A Still do. Especially with our insurance.

20 Q And why is that important for you to do that as the
21 mayor to promote the benefits that you currently offer both
22 employees and retirees?

23 A To retain employees and let them understand the
24 benefits. Average employee probably wouldn't know that we
25 spend a total of \$19,000 a year per employee for insurance.

1 MR. CONLEY: I don't believe I have anything further
2 at this time, Your Honor.

3 THE COURT: Redirect.

4 MS. BLOODGOOD: Yes, Your Honor.

5 **REDIRECT EXAMINATION BY MS. BLOODGOOD OF MAYOR KEITH SUMMEY:**

6 Q Keith Summey, you keep talking about current benefits.
7 What does the term "rest of your life" mean to you?

8 A I think it is self-explanatory.

9 Q It is different than "current", isn't it?

10 A Yes.

11 Q The rest of your life, that means later on; right?

12 A Uh-huh.

13 Q Did you ever tell employees at your luncheon or staff
14 meetings that their free insurance that you had told them
15 they would get for the rest of their life might end at any
16 point and that they shouldn't rely on it?

17 A I don't recall saying those words.

18 Q And you didn't tell them don't tell employees about it
19 because it might go away, did you?

20 A No, ma'am, I didn't.

21 Q And you would agree with me that what you were shown,
22 minutes of a finance committee, minutes of a workshop, those
23 are not documents that can amend an ordinance; are they?

24 A No, ma'am.

25 Q Are they documents they can amend your executive order?

1 A They are not. The budget is what finalizes everything.

2 Q I know the budget finalizes year-to-year how much money
3 you have, but does a budget amend your executive order like
4 personnel policies?

5 A No, the ordinance that was passed amended it on the
6 budget ordinance.

7 Q The budget -- well, let us talk about that for a
8 minute. There is an exhibit, Plaintiff's 10, which is a
9 1990 exhibit about the budget; isn't it? And why don't you
10 tell me what exhibit -- Plaintiff's Exhibit 10 is.

11 A This is my preview letter in advance of the budget
12 workshop that goes to Council.

13 Q In 1998?

14 A Correct.

15 Q Is there anything in that letter that says that the
16 Council has to put into the budget how much it is going to
17 cost to give retirees free healthcare for life, ---

18 A No, ---

19 Q --- pay for supplemental ---

20 A --- but it would have been ---

21 Q --- when they get 65?

22 A It would have been included in the budget.

23 Q Is there anything in your letter that says that it has
24 to go in the budget?

25 A No.

1 Q And you heard the finance director yesterday saying
2 that little amounts don't go into the budget, right?

3 A Everything goes into the budget.

4 Q Your budget is based -- you give money to certain
5 departments, correct?

6 A And there is a breakdown in each one of those
7 departments of the budget workshop that Council has before
8 them to go through and can ask any questions of the
9 department head if they so desire.

10 Q And your departments heads have the authority to spend
11 the money that is budgeted to them by Council?

12 A Those that are listed, yes. Any changes or any
13 movement of money has to be approved.

14 Q Now all of your executive order decisions are not
15 reflected in the budget, correct?

16 A Only those that require funding.

17 Q And you do agree with me that Council cannot put things
18 in a budget that would be -- or forget to put things in a
19 budget that they are obliged to do because of an ordinance,
20 correct?

21 A They can eliminate things from the budget by not
22 funding certain things.

23 Q And I understand that your theory here is that this
24 isn't your fault, it is City Councils fault; right?

25 A No, I can't say that. It is the fault of changing

1 times, finances, unfunded mandates that we have to deal
2 with. It is the operation of the City.

3 In no way directly affects what we think about all
4 these guys. All four of these guys are personal friends of
5 mine.

6 Q Mayor Summey ---

7 A Yes, ma'am.

8 Q You have got a 120 million dollars budget?

9 A Yes, ma'am.

10 Q Somebody decided that out of that 120 million they
11 weren't going to fund a supplemental Medicare policy for
12 these four plaintiffs?

13 A No, ma'am. It was decided for any retirees, not just
14 these four.

15 Q For the 67 retirees that you had, right?

16 A Sixty-seven. But it was the amount that was going to
17 come from employees that would retire in the future. And we
18 were trying to be as fair as we could to those who had
19 already been granted but realizing that we had to make a
20 change to come in compliance with how we spend the money of
21 the City.

22 Q But that is -- that is the crux of the lawsuit, Mayor
23 Summey. You can make a change to your current employees but
24 on what basis did you believe that you are authorized to
25 change what you had promised for the rest of their life to

- 1 people who didn't work for you anymore?
- 2 A Because it is a change in policy that affects
- 3 everything that we do in our budget.
- 4 Q And that policy amends existing ordinances and your
- 5 executive orders.
- 6 A Correct.
- 7 Q Okay. Are you aware that Ordinance 1984-23 that
- 8 promises free healthcare to retirees with 30 years of
- 9 covered service is still part of your code?
- 10 A Yes.
- 11 Q It has never been amended, correct?
- 12 A Huh-uh (shakes head).
- 13 Q Never been repealed?
- 14 A Huh-uh (shakes head).
- 15 THE COURT REPORTER: I'm sorry?
- 16 A No.
- 17 THE COURT REPORTER: Thank you.
- 18 THE WITNESS: I'm sorry. You can't do a head shake,
- 19 can you?
- 20 THE COURT REPORTER: Right.
- 21 Q In fact your current ordinance which is Defendant's 6
- 22 which is online on Section 1-13, do you have that in front
- 23 of you?
- 24 A What exhibit number ---
- 25 Q Okay.

1 A --- is it?

2 (WHEREUPON, document provided to witness.)

3 Q This is only portions of the ordinance that is online.

4 And according to the front page the ordinance -- this is the
5 ordinance that was enacted May 25th, 2017, which would be
6 the most recent version; correct?

7 A Uh-huh.

8 Q And on the first page, Section 1-13, there is a
9 statement of all of the ordinances that are not affected by
10 the adoption of a code. And then it says that the repeal
11 provided for elsewhere in the ordinance shall not affect any
12 of the following, up on the top. And then you go down to
13 16, any ordinance enacted after April 26, 1984.

14 So if Ordinance 1984-23 was enacted after April 26,
15 1984, it is not affected and it is still in effect; correct?

16 A That -- I am not a lawyer.

17 Q Well, and -- and what you as executive, chief executive
18 of the City, you have an obligation to make promises
19 consistent with existing law in North Charleston; right?

20 A Uh-huh. Yes.

21 Q And fulfill those promises if they are in accordance
22 with existing law?

23 A And no changes have been, yes.

24 Q Right. And you didn't do that, did you?

25 A I don't see where I violated any of the ordinances.

1 Q And I know you are trying to say there is something
2 wrong -- that this is City Council's job. But City Council
3 is not following the ordinance either, right?

4 A Well, that you would have to talk with them about.

5 Q Your promise was very similar to that ordinance ---

6 MR. CONLEY: Your Honor, I have an objection. She is
7 arguing to him about legal conclusions now ---

8 THE COURT: What is your legal objection?

9 MR. CONLEY: Well, she -- she's -- he's -- asking him
10 to interpret ---

11 THE COURT: Tell me your legal objection.

12 MR. CONLEY: Sure. The legal objection is she is
13 asking him to interpret what the ordinance means. The
14 ordinance speaks for itself.

15 THE COURT: She can ask him his interpretation. If he
16 doesn't know it, he doesn't know it. Okay. Overruled. I
17 don't think she is asking for a legal conclusion. She just
18 asked him what is his interpretation of it. He can either
19 say, yes, I know or, no, I don't know; and to say it,
20 period.

21 Overruled. Go ahead.

22 Q When you made the promises to the retirees -- to your
23 current employees saying for the rest of your life, that was
24 a promise about what was going to happen in the future;
25 right?

1 A Correct.

2 Q And you testified you were authorized to do that at
3 that time?

4 A If it is approved by Council in the budget.

5 Q Well, it was already in the ordinance; it had been in
6 the ordinance was 14 years; the Council had already approved
7 it; right?

8 A Still you have to have the funding. Do you want me to
9 give you an example?

10 Q No.

11 A Okay.

12 Q You can if you want. You can -- if you want to tell me
13 about funding, ---

14 A I can give you an example.

15 Q --- yeah.

16 A The State of South Carolina collects monies that comes
17 back to municipalities. We knew we'd get our money.

18 Q Mayor Summey ---

19 A So it is in the state law. But, you know, ---

20 Q Are you ---

21 A We have to provide things based upon revenues which we
22 can provide. And we have tried to do everything in a fair
23 manner that we can. Do they like what we had to do? No.
24 Do I like what we had to do? No.

25 But we still have to operate government in a reasonable

1 method to make sure that we have the funds to accommodate
2 the services that we are guaranteeing the citizens of the
3 City of North Charleston.

4 Q So as I understand your argument your contention is
5 that the City has got a \$120 million budget and it couldn't
6 afford to keep the promise to pay the supplemental insurance
7 of about, total, \$72,000 over the life of these four
8 plaintiffs; is that -- is that your position?

9 A There are 72 employees that you are saying were already
10 retired.

11 Q Sixty-seven. But only four brought a lawsuit. It is
12 too late for the others. We are talking about four people
13 in this Court today. Which about 72,000, and you can't
14 afford that in a \$120 million annual budget?

15 A There are a lot of things that add up. That is one of
16 the things that added up to the funds.

17 Q Okay. Thank you.

18 THE COURT: Thank you very much.

19 Mayor, on the trust fund how much does the City have
20 set aside in the trust fund for healthcare at this time?

21 THE WITNESS: We are annually appropriating I think it
22 is 1.7 million.

23 THE COURT: Do you have any surplus in the trust fund?

24 THE WITNESS: To be honest with you, I do not.

25 THE COURT: You don't know if you have one or don't

1 have one?

2 THE WITNESS: I know we have one. I don't know

3 THE COURT: You don't know the amount?

4 THE WITNESS: Correct.

5 THE COURT: How much interest rate are you earning on

6 it?

7 THE WITNESS: Maybe a half a percent.

8 THE COURT: A half a percent?

9 THE WITNESS: Yeah.

10 THE COURT: Is the amount per year going -- that you

11 are having to put aside for the actuary possibilities down

12 the road decreasing every year because of the surplus?

13 THE WITNESS: No, sir. It has been averaging like

14 one-point-seven to two million.

15 THE COURT: One-point-seven to two million every

16 year ---

17 THE WITNESS: Yes, sir.

18 THE COURT: --- is what it has been averaging?

19 THE WITNESS: Yes, sir.

20 THE COURT: To keep the trust fund liquid for the

21 actuary expenses down the road?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. Thank you so very much. I

24 appreciate it.

25 THE WITNESS: Thank you, sir.

1 THE COURT: Thank you for being here. Enjoyed
2 listening to you.

3 THE WITNESS: Thank you.

4 THE COURT: Have a good day.

5 THE WITNESS: Same to you, sir.

6 THE COURT: Any further witnesses?

7 MS. BLOODGOOD: No, Your Honor.

8 THE COURT: Any witnesses from the defense?

9 MR. CONLEY: No, Your Honor. We don't intend to call
10 any witnesses. Everybody has been called during their own
11 case.

12 THE COURT: Okay. All right.

13 MR. CONLEY: During the plaintiff's case. I'm sorry,
14 Judge.

15 THE COURT: Okay. All right. I am going to take a
16 short break and I am going to allow y'all to make a very
17 brief closing arguments.

18 I would like for you to address one issue that -- or
19 one question that I am going to raise to you. And by
20 raising this question I do not mean to insinuate how I am
21 going to rule. Because I am going to have to do a lot of
22 reading and do some research.

23 But the question I would like to put to both parties
24 and I want you to address in closing arguments is this: If
25 in fact I find that there is a promissory estoppel that

1 needs to be imposed then how -- what type of damages can be
2 awarded by this court, and if those damages are monetary how
3 do I aware those in the future on a promissory estoppel
4 cause of action.

5 And I don't -- I don't mean to insinuate I am going to
6 rule against the City, okay. But I need to hear y'all's
7 argument on that point, okay.

8 MR. CONLEY: Certainly. I don't take ---

9 THE COURT: And anything else that y'all want to
10 briefly argue to the court for your case. I am not trying
11 to limit you just to that question. But I do want you to
12 include that in your arguments, okay.

13 MR. CONLEY: Sure. And just for a question, I assume
14 by brief we are talking five or ten minutes is about all you
15 want?

16 THE COURT: Right. Yeah.

17 MR. CONLEY: Fair enough.

18 THE COURT: And one thing I want to hear from the
19 defense, that I understand that you have an ordinance
20 setting up a service. That service doesn't have to be
21 provided -- funded for; if it is not funded then the City,
22 or the County or the State or whoever, doesn't provide that
23 service. But a funding ordinance by itself funding -- lack
24 of funding doesn't revoke the ordinance; or it that your
25 position that lack of funding does revoke the ordinance?

1 I understand the City would not provide that service if
2 it is not funded. But that doesn't revoke the ordinance
3 itself. That just says we are not going to spend the money
4 for that service. Which the City can do.

5 Is your position that those funding ordinances that you
6 went through amended the ordinances and the executive order,
7 which in effect have the same effect with the City of North
8 Charleston as an ordinance? Do you understand my question
9 to you?

10 MR. CONLEY: I do, Judge.

11 THE COURT: Okay. I want you to address that too.

12 And you, also, Ms. Bloodgood, I don't mean to leave you
13 out of the equation. You may address it also, those two
14 questions; okay?

15 MS. BLOODGOOD: Yes, Your Honor.

16 MR. CONLEY: The only thing I will be candid with the
17 court about is I might have to do a little bit of research
18 on the way you cast the question there too in terms of just
19 the legality is somehow legally in this state not funding
20 something ---

21 THE COURT: See, I don't think non -- I don't think
22 non-funding it changed the statute. The statute -- the
23 ordinance -- I should say ordinance, is still there.

24 If you don't fund it, the service is not provided; but
25 that doesn't change the statute. They have got to amend it

1 with three readings ---

2 MR. CONLEY: And I am just telling you ---

3 THE COURT: --- or reject it.

4 MR. CONLEY: And the only reason I mention it is I just
5 want to be candid with you up front, I may have to look at
6 that before I can fully address that with the court.

7 And I am happy to do that and provide some supplemental
8 information, whether it is by way of a brief or something; I
9 can do that. And I am just -- I want to be up front with
10 you, Judge.

11 THE COURT: Well, if you want to do that, that is fine.
12 But I need -- I get the impression from the way you
13 presented your case your position is it does. I know the
14 mayor said he thought it did.

15 But I don't -- I don't know. I am asking you a
16 question. I will be glad -- if you don't want to address it
17 today I will be glad to give you ten days to address it in
18 writing, okay?

19 MR. CONLEY: Sure. I think that may be the fairer way
20 for both of us to perhaps address that in terms of the
21 legalities of that and how the law may impact it. I don't
22 know what Ms. Bloodgood's thoughts are. But those are mine.
23 She is welcome to submit something as well.

24 MS. BLOODGOOD: Your Honor, I am ready to address a lot
25 of issues; but I don't have the cases on the damages for

1 promissory estoppel. So I would like -- I am glad to give
2 you better ---

3 THE COURT: On those two questions I will be happy to
4 give both of you ten days ---

5 MS. BLOODGOOD: Okay.

6 THE COURT: --- to address those two questions that the
7 court has.

8 MS. BLOODGOOD: Okay. I think I would prefer that
9 also.

10 THE COURT: Would y'all prefer that?

11 MR. CONLEY: Certainly, Judge. I think that
12 probably ---

13 THE COURT: All right. I will give you ten days to
14 address it in writing the two questions that the court has.
15 And anything else y'all want to tell in five or ten minutes
16 in closing argument I will be glad to listen to. Okay?

17 MR. CONLEY: Certainly. Thank you.

18 MS. BLOODGOOD: Thank you.

19 THE COURT: All right. We are going to take about a
20 ten-minute break.

21 (WHEREUPON, break was had 10/19/17, 10:56 p.m. to 11:16
22 p.m.)

23 THE COURT: All right. Is the plaintiff and defense
24 ready? As I said some brief opening statements -- I mean,
25 excuse me, closing arguments.

1 MR. CONLEY: Judge, we have one brief ---

2 THE COURT: Mr. Conley, you may argue all you want at
3 this time, okay.

4 MR. CONLEY: One brief procedural issue.

5 THE COURT: Yes, sir.

6 MR. CONLEY: Just for clarity of the record what I
7 would like to do is since she is not going to put on any
8 other evidence - I have certainly told the court I am not -
9 is simply move for a directed verdict, stand upon the -- I
10 will stand upon the arguments I made at the outset of this
11 case as to what my position is on directed verdict.

12 THE COURT: Okay. Motion ---

13 MR. CONLEY: I think I ---

14 THE COURT: --- for directed verdict denied.

15 MR. CONLEY: Thank you. At this point the defense
16 rests. We don't have any further evidence to present.

17 THE COURT: Okay. Do you want to renew your -- do you
18 want to renew ---

19 MR. CONLEY: Yes, Your Honor.

20 THE COURT: --- your motion for a directed verdict?

21 MR. CONLEY: I renew my directed verdict motion again
22 based on the same arguments of legal principles I made
23 earlier in this case and that the plaintiff simply have not
24 put on their burden of proof here in regard to promissory
25 estoppel and in regard to all of the legal barriers that we

1 believe exist as to their claim of promissory estoppel or
2 any promise by the City.

3 THE COURT: All right. Taking the evidence most
4 favorable to the non moving party, motion denied.

5 MR. CONLEY: Who would you like to argue first on this?

6 THE COURT: It doesn't matter to me.

7 (WHEREUPON, counselors confer.)

8 MS. BLOODGOOD: I am going to be the shortest, so I
9 will go first.

10 **CLOSING BY MS. BLOODGOOD:**

11 Your Honor, I think that the evidence and the
12 documents, the verbal evidence and the documents, indicate
13 clearly there was a promise. It was clear. It was
14 understood. Not only was it published, but it was relied on
15 and it existed for 26 years. It was even fulfilled by the
16 City for the four years for the plaintiffs that are in the
17 room.

18 The defense of the City seems to be that the mayor had
19 no authority to make the promise. However, the authority
20 was reflected as far back as 1984. And that ordinance says
21 the mayor and City Council. It was a different mayor, but
22 clearly the intent of the City for the last 33 years has
23 been to provide benefits to retirees to induce them to stay
24 with the City. And it worked.

25 The mayor's actions in 1998 did not contradict that

1 ordinance. They extended the benefits to additional people
2 to address the turnover. And City Council did nothing to
3 object. They fulfilled his request.

4 And since there was no conflict with the ordinance
5 there was no reason to amend it. They could have; but they
6 didn't. But both of the City Council and the mayor
7 fulfilled the promise until 2009.

8 The significance of the ordinance in 1984 is it is
9 evidenced that it was reasonable for the plaintiffs to rely
10 upon it.

11 And what happened was not only did the mayor break his
12 promise which was in the letter to the retirees and was an
13 expansion under his authority as chief executive of what the
14 ordinance provided for, but what we know is the City Council
15 ignored the ordinance.

16 That is the only relevance. The bottom line is it is a
17 promissory estoppel claim because there was a clear and
18 unambiguous promise that was relied upon and because of
19 their reliance my clients have been damaged.

20 And so I will brief the issue of damages. Thank you.

21 THE COURT: Okay. Mr. Conley.

22 **CLOSING BY MR. CONLEY:**

23 Equally as briefly, Your Honor. First of all I would
24 stand upon the arguments I made earlier in this case
25 yesterday about this same time where I laid out probably in

1 too long a fashion for the court what our arguments were.
2 Those arguments have not -- have not changed. Certainly
3 haven't changed from our pretrial briefing.

4 Judge, the point of this case is overall is what the
5 plaintiffs seek to do in this case is override the
6 legislative function that goes on in a City Council.

7 This is about power. This is about where the power
8 lies to make these kinds of changes. And what they -- what
9 the plaintiffs seek to do in this case and what they are
10 essentially asking the court to do and what they are asking
11 the courts to do in all of these cases - and I mentioned to
12 the court in our pretrial brief that these cases in a
13 similar fashion exist elsewhere in the state - they are
14 essentially asking the courts to use promissory estoppel as
15 a portal for these plaintiffs to subvert what is a
16 constitutional legislative process in this state.

17 And it is a legislative process that is put in place
18 so that who controls the expenditure of funds and who
19 controls how funds are expended by governmental entities
20 such as a municipality.

21 And the fact is they are controlled by city councils;
22 and they are controlled by the councils that are elected by
23 the electorate, that live in those cities or those counties
24 or those governmental jurisdictions.

25 The point -- and that is -- I want to point that out in

1 this argument because that is really the crux and the
2 overlying issue in this case and in all of these cases is
3 that the plaintiffs conveniently have tried to figure out
4 how to subvert the legislative process by making a
5 promissory estoppel claim. It can't be done in this state.
6 It cannot be done.

7 The fact of the matter is a legislative body such as
8 City Council in this case has the means, the ability, the
9 constitutional and the legislative ability, to make changes.

10 You cannot hold one council, you know, responsible for
11 the ordinances passed by another one and make those binding
12 upon that later Council. They ---

13 THE COURT: Whoa, whoa, ---

14 MR. CONLEY: They have ---

15 THE COURT: --- whoa, now.

16 MR. CONLEY: They have ---

17 THE COURT: Are you saying one council passes an
18 ordinance and the next council that ordinance is not
19 binding?

20 MR. CONLEY: No.

21 THE COURT: Unless it -- it has got to be amended ---

22 MR. CONLEY: And that is what I was getting ready to
23 say.

24 THE COURT: -- even though it is binding it is their
25 statute.

1 MR. CONLEY: And that is what I am getting ready to
2 say, Judge. They have the ability to change it.

3 THE COURT: Now they can amend it.

4 MR. CONLEY: Sure.

5 THE COURT: But if it is amended, it is changed. But
6 if it is not amended, it is not changed.

7 MR. CONLEY: I don't disagree with that.

8 THE COURT: Okay. I thought you were telling me that
9 if they passed an ordinance with one council ---

10 MR. CONLEY: No, sir.

11 THE COURT: --- another council is not bound by that
12 ordinance.

13 MR. CONLEY: No, sir. I am saying another council is
14 not bound that they can't make a change to it ---

15 THE COURT: Okay.

16 MR. CONLEY: --- if they so desire.

17 THE COURT: Okay. All right. I will agree with that.

18 MR. CONLEY: That is -- that is what I am saying.

19 THE COURT: All right. I agree with that.

20 MR. CONLEY: They can clearly make a change. They can
21 clearly change not only what ordinances say, they can change
22 how they budget things.

23 I mean as the mayor has testified to here, and I think
24 well recognized, you know, the budget each year is by way of
25 an ordinance, for instance, at the City of Charleston. The

1 monies that are allocated to be expended each year are an
2 ordinance that passed by City Council. And without those
3 funds there are certain things that simply cannot be done.

4 So I only want to point that out as a general theme
5 here. Because that really is -- and it is the only means
6 and method that these retirees have found to try and
7 challenge the legislative function of whether it is city
8 councils or county councils as to the change in these
9 retiree health-care benefits is to try and make this claim a
10 promissory estoppel.

11 I would likewise suggest in this case, without going
12 into it too deeply, that they simply haven't met their
13 burden on a promissory estoppel case here.

14 The first prong is that there be some unambiguous
15 promise. And I think if the judge were to look at the case
16 law in this state it is pretty clear unambiguous means
17 unambiguous. Unambiguous means as to every term and
18 condition of what the promise is.

19 Let me give you an example quickly. In this instance,
20 I think, my hearing of the testimony was that there was
21 never any indication to any of these four plaintiffs about,
22 for instance, what the terms of any Medicare supplement they
23 might be provided was going to have, what was going to be --
24 what was -- what kind of Medicare supplement were they going
25 to be provided with, what was the extent of the coverage

1 that might be provided.

2 Those are ambiguities right there off the top that
3 exist in any promise they want to allege here. So I will
4 simply address that prong of the issue by saying we don't
5 think that -- the City doesn't believe they have even met
6 the first prong that there is even an unambiguous promise
7 here, assuming that there even was any kind of promise.

8 The plaintiffs have tried to cast ordinances and
9 policies as promises. These are not promises, Judge. An
10 ordinance is not a promise. An ordinance can't be a
11 promise. It is an ordinance. It is what it is, a policy.
12 It is a policy. It is what it is.

13 And the important thing about that is it is subject to
14 change. It is subject to change. And if a city council
15 decides to change it, they can change it, as can any other
16 legislative body.

17 These -- this casting of ordinances and this attempt to
18 cast policies as promises to these gentlemen is simply
19 unsupportable.

20 The other issue I want to touch on here, Judge, is the
21 issue of the statute of limitations. And I am not trying to
22 say that we don't have equal legal issues with the other
23 prongs of the promissory estoppel claim; but I know you said
24 to be brief, and I am trying to be brief.

25 But there is a statute of limitations problem in this

1 case that is terribly real. The plaintiffs did not file
2 their lawsuit until 2013. June 2013 I believe, if I am
3 correct. Perhaps May.

4 They all indicate that they got these letters. And I
5 don't think there is any dispute in the testimony they got
6 these letters, that the change was going to occur in 2009.

7 The general statute of limitations that would apply to
8 their claims is three years if you -- if you take promissory
9 estoppel and you consider it into the general contract type
10 of claims section of the statute of limitations provisions
11 or of statutes, they were outside of their three years when
12 they filed the lawsuit.

13 And so there is a real statute of limitations here --
14 issue here. The only reason I touch on it briefly here is I
15 would just ask or urge that the court not -- give that
16 adequate attention when it takes the time to review these
17 issues. The statute of limitations issue here is real. It
18 is not -- it is not a throw-in defense.

19 The other issue I want to touch on, to sort of conclude
20 here, Judge, is the issue of their damages. And I know you
21 have given ---

22 THE COURT: I have given you time to brief that, okay.

23 MR. CONLEY: Sure.

24 THE COURT: I don't need to hear it today. You can put
25 whatever you want in your brief.

1 MR. CONLEY: For brevity, Judge, we will stand on that
2 and the other arguments we have made and whatever arguments
3 we will submit to the Court.

4 THE COURT: Thank you, Mr. Conley. Mr. Conley, thank
5 you very much.

6 MS. BLOODGOOD: One short reply, Your Honor?

7 THE COURT: Yes, ma'am.

8 **CLOSING REPLY BY MS. BLOODGOOD:**

9 With all due respect, the Court of Appeals in the
10 Bishop case has already ruled that verbal promises are
11 sufficient in a strong mayor form of government to create a
12 promissory estoppel claim. And they remanded it. So that
13 issue -- that horse is out of the barn.

14 And so I would -- that is my response. I know they
15 want to re-litigate that issue, but the Bishop case is
16 extremely clear that a promissory estoppel claim can exist
17 against a municipality based on verbal assurances.

18 That is it, Your Honor.

19 THE COURT: Thank y'all very much.

20 MS. BLOODGOOD: Thank you.

21 THE COURT: Appreciate your presentation. I appreciate
22 you being prepared. And I have enjoyed trying it with you.

23 (WHEREUPON, Court's Exhibit Number 1, 1/4/16 Baxley
24 deposition, was marked for identification.)

25 (WHEREUPON, Court's Exhibit Number 2, 1/5/16 Rissanen

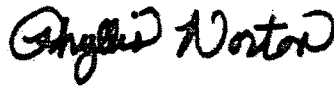
- 1 deposition, was marked for identification.)
- 2 (WHEREUPON, adjourned 10/19/17, 11:28 a.m.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 18, 2017 to October 19, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: May 31, 2018

Certified Transcript Provided For: Conley
Certification Reference #053118 Original

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alvar R. Rissanen, Michael H.)
Baxley, Clifford W. Forner, and)
Willie L. Hood,)
)
Plaintiffs,)
)
v.)
)
City of North Charleston,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-3210

**DEFENDANT'S POST-TRIAL
BRIEF**

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

At the close of trial, the Court requested the parties brief, in particular, two issues. First, the effect of the successive Defendant City of North Charleston ("City") budget ordinances approved by City Council, including in 2009 and thereafter, on the 1984 City Ordinance (the "Ordinance"). Second, the method or manner the Court could use to fashion a remedy, if it concludes Plaintiffs proved all other requirements of their promissory estoppel claim. The City addresses each issue below, and reiterates the other defenses it raised, including affirmative defenses.

A. Construed Together, the 1984 Ordinance and the City's Subsequent Budget Ordinances, Including the 2009 - 2010 Budget Ordinance, Are Consistent as a Whole

In 1984, City Council approved the Ordinance that, for the first time, allowed City retirees to access healthcare benefits through the City's healthcare plan.¹ The Ordinance required a participating retiree to pay the full cost of healthcare benefits provided by the City. For fifteen

¹ Defendant's Trial Exhibit 3.

years, from 1984 to 1998, the City provided retirees with access to City healthcare benefits in a manner consistent with the Ordinance.

City Council, thereafter, approved its 1998-1999 budget in or about May 1998, including the commitment of funds for cost-sharing healthcare benefits with retirees.² In subsequent years, City Council continued to approve City budgets, by way of ordinance, providing funds for cost-sharing healthcare benefits with retirees.³

In 2004, Mayor Summey issued Executive Order No. 2004-1 (the "Executive Order").⁴ In Section C.6 of the Executive Order, access to post-retirement healthcare benefits for City retirees is explained. Thereafter, by way of the City's 2009-2010 budget approval process, including City Council approving the 2009-2010 budget ordinance on June 11, 2009, the City modified post-retirement healthcare benefits.⁵

"The primary purpose in interpreting statutes [ordinances] is to ascertain and effectuate the intent of the legislature [City Council]." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (citing *Cain v. Nationwide Prop. and Cas. Ins. Co.*, 378 S.C. 25, 29, 661 S.E.2d 349, 351 (2008)). "Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute." *Id.* (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Id.* (quoting *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000)).

² Defendant's Trial Exhibit 2.

³ City Council is required to approve a yearly budget by way of a City ordinance. S.C. Code Ann. § 5-9-40.

⁴ Defendant's Trial Exhibit 5.

⁵ Defendant's Trial Exhibits 7, 8 and 9.

Construed as a whole, the Ordinance and the City's subsequent legislative actions, in particular the passage of yearly budget ordinances, are "harmonious." In short, the City by approval of its lawful, mandated, budget ordinances (i.e. by legislative action), chose to either fund or not fund retiree access to the City's self-funded healthcare plan. By legislative action, including the passage of the 2009-2010 budget ordinance, the City lawfully changed retiree access to the City's healthcare plan, including the costs to City retirees.

The City's legislative actions are consistent with the history of the Ordinance and the subsequent City budget ordinances. Moreover, the City's actions neither provide a basis for Plaintiffs' allegation of "promise" by the City nor their assertion that their alleged reliance was either justifiable or foreseeable. *See Alston v. City of Camden*, 322 S.C. 38, 48, 471 S.E.2d 174, 179 (1996) (health insurance is a fringe benefit subject to *prospective* modification and there can be no reasonable expectation that the terms of such benefits will remain unchanged.)

B. Plaintiffs Have No Legally Compensable Damages and, Therefore, A Legal Remedy Neither Exists nor is Appropriate

Notably, and important to this issue, Plaintiffs' sole claim is for promissory estoppel. Consequently, Plaintiffs are limited to the recovery of *reliance* damages only.

"The final element of promissory estoppel requires demonstrating that the reasonably relying promisee [Plaintiffs] sustains injury due to a disposition [act] inconsistent with alleged promise." *Barnes v. Johnson*, 402 S.C. 458, 474, 742 S.E.2d 6, 14 (Ct.App.2013). "In order to demonstrate that the injury was sustained in reliance upon an alleged promise, the promisee must show, but for the promisor's inconsistent disposition [act], the complained-of injury would not have otherwise resulted." *Id.* "Promissory estoppel . . . always requires some *reliance on the promise which leads to injury.*" *Prescott v. Farmers Telephone Cooperative, Inc.*, 328 S.C. 379,

396, 491 S.E.2d 698, 706, n.8 (Ct.App.1997), *rev'd on other grounds*, 335 S.C. 330, 516 S.E.2d 923 (1999) (emphasis added). *See also Craft v. South Carolina Commission for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct.App.2009) (plaintiff's promissory estoppel claim failed because he could not show he lost a better opportunity because of alleged reliance on agency promise).⁶

As in *Craft*, Plaintiffs assert they relied upon representations and lost a prospective benefit (i.e. post-retirement healthcare benefits). If the lost value of a representation were sufficient to support a promissory estoppel claim, the courts in *Craft* would have been compelled to consider the income stream lost from cancellation of future business at the Commission for the Blind. Instead, the trial judge awarded summary judgment and the Court of Appeals affirmed.

In addition to Plaintiffs showing a connection between their reliance on a promise(s) and any injury, Plaintiffs must show "the existence or amount of damages cannot be left to conjecture, guess or speculation." *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 391, 162 S.E.2d 705, 708 (1968). "As a general rule, the evidence [of damages] should be such as to enable the court or jury to determine the amount of damages with reasonable certainty or accuracy; and it is sufficient if they are so established.

Proof of the amount of loss with absolute or mathematical certainty is not required, and it does not matter that the determination of damages depends to some extent on the consideration of contingent events. So, it had been held sufficient if a reasonable basis of computation is afforded, even though the result may be only approximate, or to adduce evidence which is the best the case is susceptible of under the circumstances and which will permit a reasonably close estimate of the

⁶ As noted previously, the same issue was addressed by Judge Gee and retired Justice Jean H. Toal on remand in *Bishop* and a companion case. In each case, the court denied class certification because each promissory estoppel claim requires some proof of opportunity loss independent of the "value" of the promise. *See* Exhibits B and C to the City's Pre-Trial Brief.

loss.”” *Id.* (quoting 25A C.J.S. Damages § 162(2), p. 80.) Plaintiffs, even if they could have proved other elements of their promissory estoppel claim, did not present sufficient evidence of damages (i.e. *value* of their alleged injury).

The sole remedy available to Plaintiffs is the recovery of reliance damages. However, no Plaintiff presented evidence of reliance damages (i.e. lost opportunity) and, consequently, no Plaintiff presented evidence of the value or amount of his reliance damages. As a result, Plaintiffs ask this Court to “enforce” the alleged promise, including enforcement of the alleged promise *prospectively*. In short, Plaintiffs seek a remedy/remedies associated with a breach of contract claim, or other causes of action, even though *their sole cause of action is for promissory estoppel*.

In addition to the barriers to Plaintiffs’ claims discussed above, the City reiterates below the other defenses and barriers to Plaintiffs’ cause of action for promissory estoppel.

C. One City Council Cannot Bind Successor City Councils

The City operates under a mayor-council form of government. Under the City's mayor-council form of government, Mayor Summey has certain administrative responsibilities and powers. S.C. Code Ann. § 5-9-30. However, City legislative powers, including the adoption of an annual budget, by way of a budget *ordinance*, and associated committal and expenditure of City funds, are vested with City Council. S.C. Code Ann. § 5-9-40 (“The council shall adopt an annual budget for the operation of the municipality and capital improvements.”)

“One council may not by an ordinance bind itself or its successors so as to prevent *free legislation* in matters of municipal government.” *Wright v. City of Florence*, 229 S.C. 419, 424-25, 93 S.E.2d 215, 218 (1956) (emphasis added). Second, “a council may not by contract bind its successors to forego or to exercise their legislative functions.” *Newman v. McCullough*, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) (quotations and citations omitted).

The funds the City utilizes to provide healthcare benefits to employees and retirees come from the *yearly* budget appropriations approved by City Council. City Council's yearly appropriation of funds for healthcare benefits, by way of a budget ordinance, is a legislative function. *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992); S.C. Code Ann § 5-9-40. *See also Piedmont Public Service Dist. v. Cowart*, 319 S.C. 124, 13, 459 S.E.2d 876, 880 (Ct. App. 1995) ("If the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils."); *Cunningham v. Anderson County*, 402 S.C. 434, 441-450, 741 S.E.2d 545, 549-553 (Ct. App. 2013) *aff'd* 414 S.C. 298, 299, 778 S.E.2d 884, 885 (2015) (County council cannot enter into a contract binding successor councils).

D. Promise for Future Benefits is Unenforceable Violation of Public Policy

S.C. Const., art. X, § 14, entitled "Bonded Indebtedness of Political Subdivisions" controls the City incurring debt. For instance, section 2 of the article states the following:

Such political subdivisions shall have the power to incur indebtedness in the following categories *and no other*: (a) General obligation of debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section [i.e., revenue bonds and tax increment financing bonds]. (emphasis added.)

Additionally, the City can only obtain general obligation debt "upon such terms and conditions as the General Assembly shall prescribe by law" and must involve the delivery of "a schedule showing the date and the principal and interest payments to become due" *See*, art. X, § 14 (2) and (5). Consequently, the City is prohibited by the South Carolina Constitution from incurring an undefined obligation for future payments of behalf of former employees, including the four retirees in this case.

E. Immunity

The South Carolina Tort Claims Act (“SCTCA”), S.C. Code Ann. § 15-78-10 *et seq.*, preserves the City’s sovereign immunity as to legislative and administrative actions, enforcement, implementation and adoption of ordinances, resolutions, rules, regulations and written policies. *See* S.C. Code Ann. § 15-78-60(1), (2), (3) and (4). Additionally, the SCTCA preserves immunity regarding “the exercise of discretion or judgment by the governmental entity or employee or the performance of the failure to perform any act or service which is in the discretion of the governmental entity or employee.” S.C. Code Ann. § 15-78-60(5).

F. Constitutional Protection

The City’s adoption of an ordinance or resolution “is a legislative enactment and presumed to be constitutional.” *Sandlands C & D, LLC v. County of Horry*, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011) (*quoting Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010)). In considering whether a City ordinance is constitutional, the City’s “powers . . . should be liberally construed.” *Id.* (*citing* S.C. Const. art. VIII, § 17. *See also Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013) (separation of powers doctrine expressed in S.C. Const. art. I, § 8 prohibits judicial interference in legislative functions); *Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 121-122, 691 S.E.2d 453, 460-461 (2010) (challenge to the “wisdom, policy or expediency of an [legislative] act” presents a “nonjusticiable political question”); *Smith v. Tiffany*, S. C. Op. No. 27715 (April 26, 2017) at p. 8 (“a court may not reject the legislature’s policy determinations merely because the court may prefer what it believes is a more equitable result.”)).

G. Statute of Limitations

In or about May 2009, Plaintiffs each received a letter from the City notifying each of the changes affecting their access, as well as their dependents' access, to post-retirement healthcare benefits. Plaintiffs Rissanen, Baxley and Hood filed their Complaint on May 31, 2013. Forner did not join the lawsuit (by way of an Amended Complaint) until June 28, 2013.

The applicable statute of limitations for Plaintiffs' claims is S.C. Code 15-3-530(1): "Within three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in 15-3-520" Although it does appear South Carolina appellate courts have had the opportunity to expressly apply 15-3-520(1) to claims for promissory estoppel, it is clear that the claims fit with the terms "obligation" and/or "liability." Moreover, other jurisdictions reviewing the issue applied the existing general statute of limitations for contract claims.⁷

⁷ See generally *Romeo v. Unumprovident Corp.*, CIV.A. 07-1211, 2008 WL 375161, at *1 (E.D. Pa. Feb. 11, 2008) (Pennsylvania has applied its four-year statute of limitations governing contracts broadly: to promissory estoppel claims, as well as to various forms of implied contract claims); *All. Associates, L.C. v. All. Shippers, Inc.*, 265101, 2006 WL 1506687, at *1 (Mich. App. June 1, 2006)(a promissory estoppel claim is subject to the six-year statute of limitations for contract actions); *Rodell v. Objective Interface Sys., Inc.*, 14-CV-01667-MSK-MJW, 2015 WL 5728770 (D. Colo. Sept. 30, 2015)(promissory estoppel claims are "contractual in nature," and are similarly subject to a three-year statute of limitation); *Diorio v. Coca-Cola Co.*, 08-CV-00418-H (CAB), 2009 WL 483190 (S.D. Cal. Feb. 24, 2009)(Plaintiff's causes of action for breach of contract, quasi contract-unjust enrichment, promissory estoppel, breach of implied covenant of good faith and fair dealing, and negligence are all actions "upon any contract, obligation or liability founded upon an instrument in writing," and are therefore subject to a four year statute of limitations); *Binkley v. Entergy Operations, Inc.*, 4-08-CV-01845 GTE, 2009 WL 1544283, at *1 (E.D. Ark. June 3, 2009) *aff'd*, 602 F.3d 928 (8th Cir. 2010)(parties agreed that a three year statute of limitations applies to plaintiff's promissory estoppel claim under statute governing contracts); *Torringsford Farms Ass'n, Inc. v. City of Torrington*, 816 A.2d 736 (Conn. App. 2003)(homeowners associations' promissory estoppel claim against city arose from dispute over bond for private roads in common ownership communities, as such claims were claims for breach of contract); *Avantix Laboratories, Inc. v. Pharmion, LLC*, CIV.A.N10C-01-010MMJ, 2012 WL 2309981 (Del. Super. June 18, 2012) (the parties agreed that Section 8106's three-year period of limitations governs

The “discovery rule” is applicable to the statute of limitations regarding Plaintiffs’ claims.

“According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.” *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996); *Bayle v. S.C. Dep’t of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001), *cert. denied*. In *Dean*, the Supreme Court stated:

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the “exercise of reasonable diligence” to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.

Id. at 363, 364, 468 S.E.2d at 647 (emphasis in original)(citations omitted); *Young v. South Carolina Dep’t of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct). “The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question.” *Joubert v. South Carolina Dep’t of Soc. Servs.*, 341 S.C. 176, 534 S.E.2d 1 (Ct.App.2000); *see also Young*, 333 S.C. at 719, 511 S.E.2d at 416 (“In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must

Plaintiff’s breach of contract, unjust enrichment, quantum meruit, and promissory estoppel claims.). *But see St. Julian v. Trustees of Agreement of Trust for Mar. Ass’n-I.L.A. Pension Plan*, 5 F. Supp. 2d 469 (S.D. Tex. 1998) (the residual limitations period, which covers actions for promissory estoppel and misrepresentation, is also four years); *Abdrabo v. State of N.Y.-Worker Compen. Bd.*, 03 CIV. 7690 (DLC), 2004 WL 1396152 (S.D.N.Y. June 22, 2004) (an action for which no limitation is specifically prescribed by law is six years).

decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.”).

“Reasonable diligence is intrinsically tied to the issue of notice.” “The *Joubert* Court explicated: ‘We have interpreted the ‘exercise of reasonable diligence’ to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist.’” *Id.* at 191, 534 S.E.2d at 8 (*quoting Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996)); *see also Wiggins v. Edwards*, 314 S.C. 126, 442 S.E.2d 169 (1994) (stating the exercise of reasonable diligence means simply that the injured party must act with some promptness where facts and circumstances of injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; statute of limitations begins to run from this point and not when advice of counsel is sought or full-blown theory of recovery is developed)(citation omitted).

Plaintiffs must assert their claims accrued at one of the following times: 1) in May 2009 when each received notice the City was changing their post-retirement healthcare benefit as of July 1, 2010; or, 2) on the date each of them turned age 65 and the plan change impacted their benefit. If Plaintiffs assert their promissory estoppel claims accrued in May 2009, all Plaintiffs’ claim are barred by the applicable three-year statute of limitations.⁸ On the other hand, if Plaintiffs contend

⁸ Because Plaintiffs Rissanen and Baxley concede the City did not break the alleged promise to them until 2016 when each of them turned age 65, *three years after the lawsuit was filed*, Plaintiffs must contend their promissory estoppel claim accrued in May 2009 because, otherwise, neither Rissanen nor Baxley, by their own admission, had a promise to contend was broken until 2016 when each turned 65 years of age.

their claims did not accrue until each turned age 65, Plaintiff Forner has no promissory estoppel claim because he will not reach age 65 until 2024.⁹

In summary, there is no applicable accrual date the Court can apply, or Plaintiffs can assert, that allows all Plaintiffs' claims to survive the three-year statute of limitations.

H. Promissory Estoppel Claim

"Promissory estoppel is a quasi-contract remedy." *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015). "Courts have used the doctrine where the refusal to apply it 'would be virtually to sanction the perpetration of a fraud or would result in other injustice.'" *Id.* at 379, 769 S.E.2d at 241 (quoting *Satcher v. Satcher*, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct.App.2002)).

"A contract and promissory estoppel are two separate and distinct legal theories. They are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other.'" *Satcher v. Satcher*, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct.App.2002) (quoting *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985)). "Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property [or inconsistent act]." *Id.* at 484, 570 S.E.2d at 538-39.

"Although promissory estoppel is a flexible doctrine that aims to achieve equitable results, it, like all creatures of equity, has limitations." *Barnes v. Johnson*, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct.App.2013). "Specifically, the doctrine's elements represent a balancing between

⁹ Plaintiffs cannot choose individual, differing theories regarding when their claims for promissory estoppel accrue/accured. Collectively, they must rely on a single, alleged accrual date.

affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." *Id.* "To this end, and particularly because promissory estoppel applies without a contract, the promise to be enforced must be unambiguous with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition [act] by the promisor." *Id.* at 469-70, 742 S.E.2d at 11. "Thus, promissory estoppel has broad applicability to prevent injustice, but where a promise is unclear or the alleged harms are unconnected to the inconsistent disposition [inconsistent act], the doctrine does not risk imposing its own inequity against the party sought to be estopped." *Id.*

"The elements of promissory estoppel are (1) a promise unambiguous in its terms is present; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to who the promise is made must sustain injury in reliance on the promise." 7 *S.C. Jur. Estoppel and Waiver* § 14.1, citing *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (Ct.App.1993). See also *Bishop v. City of Columbia*, 401 S.C. 661, 664, 738 S.E.2d 255, 261 (Ct.App.2013) (listing elements necessary to prove promissory estoppel); *Richardson* at 379, 769 S.E.2d 237, 241 (2015) (listing elements necessary to prove promissory estoppel). Plaintiffs have not satisfied any of the requirements to prove a promissory estoppel claim.

Further, in *Alston v. City of Camden*, 322 S.C. 38, 48, 471 S.E.2d 174, 179 (1996), the South Carolina Supreme Court held health insurance is a fringe benefit subject to *prospective* modification and there can be no reasonable expectation the terms of such benefits will remain unchanged. Correspondingly, the *Alston* court held a city must have the ability to alter its benefits to meet changing circumstances. *Id.* at 48-49, 471 S.E.2d at 180. See also *Anonymous Taxpayer v. S.C. Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008) (dismissing retiree claims that the

State's change in approach to taxing retirement benefits was void). Additionally, in *Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011), the South Carolina Supreme Court recognized "the well-established rule that citizens are presumed to know the law and are charged with using care to protect their interests." *But see Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255, 261 (Ct.App.2013) (holding "trial court erred in granting summary judgment against Retirees on their estoppel claims based upon representations made by their supervisors and the City's human resource personnel.")

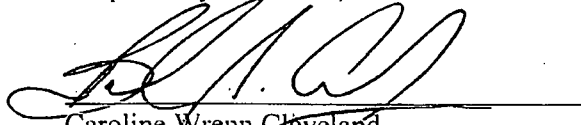
I. Fringe Benefits are Not "Wages"

By law, "wages" are confined to monetary payments. *Anderson v. Baptist Medical Center*, 343 S.C. 487, 489, 551 S.E.2d 526, 530 (2001) (fringe benefits such as "medical, disability and life insurance" are not part of an employee's wages); *see also*, S.C. Code Ann. § 41-1-25(A)(1) ("employee benefit" means anything of value in addition to wages, including "any health benefits") The Supreme Court stated in *Anderson* that including fringe benefits such as insurance in the calculation of wages "would dramatically alter the practice in this state." *Id.* 343 S.C. at 497, 551 S.E.2d at 531.

Plaintiffs assert post-retirement healthcare benefits are a form of deferred compensation "earned" during their employment and to which they are entitled upon retirement. This assertion is contrary to the Supreme Court's decisions in *Alston* and *Anonymous Taxpayer* and the General Assembly's definition of "employee benefits" in Section 41-1-25.

As addressed above, Plaintiffs' requests for relief would invalidate a duly adopted ordinance and require the City to operate in a manner inconsistent with a lawful directive of its elected governing authority.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT CITY OF
NORTH CHARLESTON

Charleston, South Carolina
October 30, 2017

2013-CP-10-3210

CERTIFICATE OF SERVICE

This is to certify that I have this 30th day of October, 2017, caused to be served a copy of Defendant's Post-Trial Brief on counsel for Plaintiff by depositing same in the United States Mail.

First Class postage prepaid, and addressed to:

Nancy Bloodgood, Esquire
BLOODGOOD & SANDERS
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, South Carolina 29464

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JULIE J. ANDERSON
CLERK OF COURT

Jennifer Garrett Busbee
Jennifer Garrett Busbee

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Alvar R. Rissanen; Michael H. Baxley;	)	Case No.: 2013-CP-10-3210
Clifford W. Forner; and Willie L. Hood,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Plaintiffs' Post Trial Supplemental Brief
	)	
City of North Charleston,	)	
	)	
Defendant.	)	

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CLERK OF COURT

Pursuant to the Court's request, Plaintiffs submit the following information in response to two (2) questions posed by the Court at the end of the bench trial of this case.

I. Equitable remedies available in a Promissory Estoppel claim.

Promissory estoppel is used where the refusal to apply it would sanction the perpetration of a fraud or would result in other injustice. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (quoting *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). South Carolina courts recognize a remedy in equity in a promissory estoppel claim. *Satcher v. Satcher*, 351 S.C. 477, 483-484, 570 S.E.2d 535, 538 (Ct. App. 2002); *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993).

The principle "equity regards as done that which ought to be done" applies in cases where the party seeking equitable relief establishes "a clear obligation based upon a valuable consideration that another do some act which he has failed to perform." *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011) (citing *Wilkie v.*

Phila. Life Ins. Co., 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone).

“When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent.” *Regions Bank*, 394 S.C. at 253-254, 715 S.E.2d at 354-355 (quoting *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480 (1842)). Once a party establishes an equitable right, the court may dispense with formalities that would defeat the equity. *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. Where a substantive right exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004).

In *Dockins v. Ingles Mkts.*, 306 S.C. 496, 497, 413 S.E.2d 18, 18-19 (1992), the Court held equitable relief included employment, reinstatement, and promotion; the idea being to put the employee back in the position he would have been. “[A] plaintiff could seek restitution in equity, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession. for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession.” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213-214 (2002).

Back pay is an equitable remedy because it is a form of restitution. *Curtis v. Loether*, 415 US 189, 197 (1974). Here, restitution takes the form of money owed to Plaintiffs Rissanen, Baxley and Hood not as back pay, but as reimbursement to them for their purchase of Supplemental Medicare policies which the City should have purchased on their behalf. The amount of restitution is easily ascertainable year to year.

Reinstatement is an equitable remedy also and here reinstatement of the broken promise can occur through the City purchasing a Medicare Supplement Policy for each Plaintiff at age 65. From a practical standpoint, the cost is also easily known each year and only changes annually. If necessary, Plaintiffs could purchase the Policy and bill Defendant City each year so they are reimbursed for the actual cost of the Medicare Supplement Policy. The Plaintiffs would then be made whole regarding the promise of free retiree insurance for life.

Additionally, to make Plaintiffs Rissanen and Baxley whole, either the City can reinstate their dependents back on the City's self-insured group health insurance until the dependents turn 65 and are eligible for Medicare, or reimburse Plaintiffs Rissanen and Baxley for the increased cost of their wives' health insurance they have incurred (which is the difference between what Plaintiff would have paid the City for the cost of single coverage for their wives and what the Plaintiffs pay for private policies for their wives.)

An equitable remedy also includes the damages caused when a plaintiff sustains injury by quitting his job in reliance on a promise. *Craft v. S.C. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In Cliff Forner's case, he resigned before working for 30 years because he received a letter from the Mayor in 2009 indicating employees who retired before June of 2009 would be treated differently than those who retired after that date. By retiring early to obtain the benefit of what was promised to him, he failed to qualify for free

insurance until age 65 as he only worked 28 years so he has been paying 16.5% and will continue to pay 16.5% of the cost of his insurance until age 65. Chief Forner had to purchase two (2) years of military retirement at a cost of \$20,000 in order to be eligible to retire before June of 2009. Therefore, Chief Forner's make whole damages include the \$20,000 he had to pay to qualify for retirement as well as the value of a Medicare Supplement policy he will purchase when he becomes 65.

II. Failure to enforce an Ordinance does not amend or repeal that Ordinance.

Pursuant to S.C. Code § 5-7-272, municipal ordinances that have been approved by two (2) readings have the force of law. Further, all municipal ordinances have to be codified. (S.C. Code § 5-7-290.) North Charleston first codified its ordinances in 1986. (Ord. 1986-29.) Ordinance No. 1984-23 is included in the City's codification. North Charleston City Council has never repealed Ord. No. 1984-23. There is a clear and explicit way to amend City ordinances in the North Charleston City Code (North Charleston City Code, Section 1-5) and Council never amended Ord. No. 1984-23.

The mere failure to enforce an ordinance by failing to fund it does not amend or repeal it. The enforcement of an ordinance is discretionary; the Tort Claims Act (S.C. Code § 15-78-60 (4)) acknowledges this fact by providing that a governmental entity is not liable for loss resulting from enforcement or *failure to enforce* an ordinance. North Charleston's failure to enforce Ord. No. 1985-23 by not funding it does not amend or repeal that Ordinance and they are not liable for failing to enforce it.

Respectfully Submitted,

BLOODGOOD & SANDERS, LLC

Nancy Bloodgood

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Attorneys for Plaintiffs

Charleston, South Carolina

Date: October 30, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Alvar R. Rissanen; Michael H. Baxley;	)	Case No.: 2013-CP-10-3210
Clifford W. Forner; and Willie L. Hood,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF NANCY BLOODGOOD
	)	IN SUPPPORT OF ATTORNEY FEES
City of North Charleston,	)	
	)	
Defendant.	)	

FILED
 2018 FEB 10 AM 10:17
 CLERK OF COURT
 JUDGE CHRISTOPHER

I am over the age of eighteen and state under oath as follows:

1. I submit this Affidavit in support of Attorney fees pursuant to S.C. Code §15-77-300.

2. I represented the four (4) Plaintiffs in this case who were the prevailing parties against a state entity. A jury returned a verdict in their favor by Order dated February 6, 2018 and filed February 9, 2018.

3. The relevant attorney fees statute is S.C. Code §15-77-300 which states:

(B) Attorney's fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

- (1) the nature, extent, and difficulty of the case;
- (2) the time devoted;
- (3) the professional standing of counsel;
- (4) the beneficial results obtained; and
- (5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney's fees.

4. I would like to address each of the five (5) factors separately:

a. Nature, Extent and Difficulty of the Case

A suit against a municipality is not an easy suit to win the City of North Charleston enjoys a good reputation in the community and is generally well respected as an employer. The case was difficult to prepare for and win as it was vigorously contested by the City over the course of four (4) years and involved municipal law issues as well as employment issues. There was extensive discovery, mediation and several attempts to settle this matter before trial. Plaintiffs survived summary judgment, six (6) depositions were taken and post trial supplemental briefs were submitted after the conclusion of a day and a half bench trial.

b. Time Devoted

The nature of employment cases requires long and intense hours, great risk of no payment, or, at best late payment. Priority work that delays the lawyers other legal work is entitled to some premium.

Although hours claimed or spent on a case should not be the sole basis for determining a fee, *Electronics Capital Corp. v. Sheperd*, 439 F.2d 692 (5th Cir. 1971), they are a necessary ingredient to be considered. A trial judge should weigh the hours claimed against his or her own knowledge, experience, and expertise of the time required to complete similar activities. *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974); *see also Riverside v. Rivera*, 477 U.S. 5561 (1986). In this case, the Complaint was filed in May of 2013 and tried more than four (4) years later. Undersigned counsel respectfully submits that her hourly billing statement (attached as Exhibit A to Affidavit in Support of Attorney Fees) reflects reasonable amounts of time spent on each task over the course of the last four and a half years as depositions were scheduled and rescheduled and the case was on the trial roster several times but had to be moved to accommodate the City's witnesses. Plaintiff is not requesting reimbursement for any costs.

c. Professional Standing of Counsel:

The *Johnson* Court advised that:

The trial judge should closely observe the attorney's work product, his preparation, and general ability before the court. The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration.

Johnson, 488 F.2d at 718. This factor appears to be one for the Court's sole determination based on its review of counsel's work product and performance at trial. Undersigned counsel respectfully asserts she has met the Court's expectation as after surviving summary judgment, the Court denied directed verdict and judgment notwithstanding the verdict.

d. Beneficial Results Obtained:

The result obtained by Plaintiff is significant as there are similar cases pending against the City of Columbia and St. Paul's Fire District. Though Plaintiffs' monetary damages are not huge, the value of the award over the course of their lives is significant.

e. Customary Legal Fees for Similar Services:

The determination of a market rate is an important factor in finding a reasonable hourly rate. *Westmoreland Coal Co. v. Cox*, 602 F.2d 276, 289 (4th Cir. 2010) (citing and quoting *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990)). Undersigned counsel regularly charges \$350.00 per hour for her hourly clients, as does her law partner. "The fact Plaintiff seeks actual billing rates used for all clients strongly favors a finding the rates *per se* reasonable." *Miller v. HSBC Fin. Corp.*, 3:08-cv-01942-MJP, 2010 WL2722689*2 (D.S.C. July 9, 2010) (citing *Liberty Mutual Insurance Company v. Employee Resource Management, Inc.*, 176 F. Supp. 2d 510 (D.S.C. 2011)). Undersigned counsel was awarded \$350 in this court three (3) years ago in a case against a Charter School in Charleston County.

5. Over the course of the last 4 years, undersigned counsel and her law partner spent 71.30 hours on this case while working for the Foster Law Firm and 74.7 hours while working for Bloodgood & Sanders, LLC (Time sheets, Ex. A). At a rate of \$350 per hour, this equals \$51,100 ($\$350 \times 146$ hours).

6. The provision in S.C. Code § 15-77-300 which limits the attorney fees to what the parties contracted to pay the attorney does not apply here. The parties contracted to pay attorney fees equal to 33% of any recovery. The total monetary recovery in this case is based on the life expectancy of males at age 65 when they have to obtain a Medicare Supplement Policy, which is twenty years. Plaintiffs testified the monthly cost of a Medicare supplemental policy is \$137.66, so the annual cost is \$1,651.92. The total cost of the supplemental policy over twenty years is \$33,038.40 so the total cost for all four (4) Plaintiffs for the next twenty years, without inflation is \$132,153.60 ($\$33,038.40 \times 4$). Assuming an inflation rate of 2.5%, which is conservative, the future value of the monetary award is \$196,182. One third of this amount is ($\$196,182 / 3$) is \$65,394. Section of S.C. Code § 15-77-300 has no effect on this request for attorney fees as \$51,100 is less than the agreed upon fee of \$65,394.

7. For the foregoing reasons, Plaintiff respectfully requests that this make findings of fact regarding the requirements of S.C. Code §15-77-300 and award undersigned counsel \$51,100 for attorney fees.

FURTHER, YOUR DEPONENT SAYETH NOT.


Nancy Bloodgood

Charleston, S.C.
Date: February 20, 2018

Sworn to and subscribed before me
this 20th day of February, 2018.

Ryan Daniel
Notary Public for the State of South Carolina
My Commission Expires: 2/15/2027



EXHIBIT A

Client	Trans Date	H Tcode/ Tmkr P Task Cod	Rate	Hours to Bill	Amount	Ref #
Client ID 11019.0000 City of North Charleston Retirees						
						3
11019.0000	05/20/2013	2 P 1		0.60	0.00 Research standing.	2
11019.0000	05/23/2013	2 P 1		3.40	0.00 Meeting with clients and revise and edit complaint.	1
11019.0000	05/28/2013	2 P 1		0.60	0.00 Revise Complaint; email to clients to review.	5
11019.0000	05/29/2013	2 P 1		0.80	0.00 Receive and review emails from clients and revise complaint; email to them.	6
11019.0000	05/30/2013	2 P 1		2.10	0.00 Telephone conference with Chief Rissanen re: Complaint; revise same.	7
11019.0000	06/11/2013	2 P 1		0.30	0.00 Telephone conference with Al; Receive * and review emails from opposing counsel and Al.	8
11019.0000	06/25/2013	2 P 1		1.40	0.00 Meeting with new client; amend complaint.	10
11019.0000	06/26/2013	2 P 1		1.30	0.00 Amend complaint.	9
11019.0000	04/24/2015	2 P 1		2.10	0.00 Prepare draft discovery; Email opposing counsel re stay; Prepare for meeting with clients	11
11019.0000	05/07/2015	2 P 1		0.20	0.00 Receive and review consent order lifting stay	12
11019.0000	05/11/2015	2 P 1		0.80	0.00 Meet with clients	13
11019.0000	05/15/2015	2 P 1		0.30	0.00 Receive and review Answer	14
11019.0000	05/21/2015	2 P 1		0.60	0.00 Meeting with Bob conley re case	15
11019.0000	07/02/2015	2 P 1		0.60	0.00 Meeting with Bob re settlement; Emails to clients	16
11019.0000	07/08/2015	2 P 1		0.60	0.00 Telephone conferences and messages with all of the clients	17
11019.0000	07/21/2015	2 P 1		0.30	0.00 Meeting with Bob conley re settlement	18
						19
11019.0000	08/04/2015	2 P 1		1.60	0.00 Prepare list of witnesses and statements and complete deposition summaries	20
11019.0000	10/08/2015	2 P 1		0.10	0.00 Telephone conference with Bob Conley re settlement	21
11019.0000	10/15/2015	2 P 1		1.90	0.00 Work on discovery responses	22
11019.0000	10/16/2015	2 P 1		1.80	0.00 Work on discovery responses	23
11019.0000	10/29/2015	2 P 1		0.80	0.00 Finalize discovery responses; Telephone conference with Cliff	24
11019.0000	12/15/2015	2 P 1		0.90	0.00 Receive and review correspondence from opposing counsel re discovery responses; Start analyzing 2000+ pages of discovery	26
11019.0000	12/28/2015	2 P 1		1.30	0.00 Prepare for meeting; Receive and review personal files	27
11019.0000	12/29/2015	2 P 1		1.40	0.00 Meet with clients; Supplement discovery	28
11019.0000	12/30/2015	2 P 1		1.40	0.00 Start to prepare questions for Keith Summey deposition	29
11019.0000	12/31/2015	2 P 1		0.60	0.00 Continue working on Summey questions	30
11019.0000	01/04/2016	2 P 1		4.80	0.00 Meet with clients and attend two depositions	31
11019.0000	01/05/2016	2 P 1		4.20	0.00 Meet with clients and attend two depositions	32
11019.0000	02/02/2016	2 P 1		0.90	0.00 Review Keith Summey deposition and take notes	35

Client	Trans Date	Tmkr	H Tcode/ P Task Cod	Rate	Hours to Bill	Amount	Ref #
Client ID 11019.0000 City of North Charleston Retirees							
11019.0000	02/20/2016	2	P 1		0.30	0.00 Receive and review motion for SJ and forward to clients	36
11019.0000	02/29/2016	2	P 1		1.30	0.00 Prepare for Newton deposition	37
11019.0000	03/02/2016	2	P 1		1.20	0.00 Prepare for and take deposition of Warren Newton; Meeting with opposing counsel re same	38
11019.0000	04/20/2016	2	P 1		0.60	0.00 Edit and supplement memo in opposition to summary judgment	42
11019.0000	04/27/2016	2	P 1		1.90	0.00 Prepare for SJ hearing	43
11019.0000	04/28/2016	2	P 1		2.60	0.00 Prepare for and attend motion hearing in Charleston	44

Total for Client ID 11019.0000 Billable 52.30 0.00 City of North Charleston Retirees

GRAND TOTALS

Billable 52.30 0.00

-6.70

45.60

Client	Trans Date	Tmkr	H Tcode/ P Task Cod	Rate	Hours to Bill	Amount	Ref #
Client ID 11019.0000 City of North Charleston Retirees							
11019.0000	05/30/2013	6 P	1		0.50	0.00 Draft summons, coversheet, and letter and send complaint to COC for filing.	4
11019.0000	12/01/2015	6 P	1		0.30	0.00 Research jury trial re estoppel	25
11019.0000	01/08/2016	6 P	1		1.60	0.00 Prepare for Summey deposition	33
11019.0000	01/14/2016	6 P	1		2.40	0.00 Summey deposition (take depo and review newly produced documents)	34
11019.0000	03/28/2016	6 P	1		0.60	0.00 REview draft motion for class certification	39
11019.0000	04/18/2016	6 P	1		2.40	0.00 Review law and depositions for summary joint response	40
11019.0000	04/18/2016	6 P	1		2.40	0.00 Review law and depositions for summary judgment response	45
11019.0000	04/18/2016	6 P	1		3.90	0.00 Continue drafting response to summary judgment	46
11019.0000	04/19/2016	6 P	1		3.90	0.00 Continue drafting response to summary judgment	41
11019.0000	04/24/2016	6 P	1		3.60	0.00 Review defendant's memorandum in support of summary judgment and continue drafting response; Research defenses and cases	47
11019.0000	04/24/2016	6 P	1		4.10	0.00 Add cites and exhibits to memo; Finalize memo and file	48

Total for Client ID: 11019.0000	Billable	25.70	0.00	City of North Charleston Retirees

GRAND TOTALS				

Billable	25.70	0.00

45.60

71.30 total

Bloodgood & Sanders, LLC

INVOICE

242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
United States

Invoice # Final
Due On: 03/21/2018

City of North Charleston

2016-00031

City of North Charleston Retirees - Employment

Date	Notes	Quantity	Rate	Total
05/05/2016	Start preparing for trial	1.40	\$0.00	\$0.00
05/09/2016	Prepare questions for Newton	0.90	\$0.00	\$0.00
05/16/2016	Prepare for and meet with three Plaintiffs in preparation of trial	4.80	\$0.00	\$0.00
05/19/2016	Meeting with Willie regarding trial preparation	1.10	\$0.00	\$0.00
05/23/2016	Produce additional documents to Opposing Counsel	0.30	\$0.00	\$0.00
06/07/2016	receive and analyze motion to alter judgment	0.30	\$0.00	\$0.00
06/15/2016	revise trial questions; meet with Mike re Affidavit; revise response to Motion to Alter	1.20	\$0.00	\$0.00
06/16/2016	revise trial questions; assemble exhibits	0.80	\$0.00	\$0.00
06/21/2016	meeting with opposing counsel re scheduling hearing and contacting court	0.30	\$0.00	\$0.00
10/25/2016	start to prepare for hearing	1.70	\$0.00	\$0.00
11/01/2016	prepare pre-trial brief	2.10	\$0.00	\$0.00
11/03/2016	prepare for trial; meetings with clients	3.40	\$0.00	\$0.00
11/05/2016	prepare for trial; assemble exhibits; telephone conference with opposing counsel and clients; prepare damages charts	6.80	\$0.00	\$0.00
11/06/2016	continue preparing for trial; telephone conference with opposing counsel re settlement; emails to clients re same; emails to court	3.80	\$0.00	\$0.00
12/20/2016	attend mediation	2.60	\$0.00	\$0.00
12/30/2016	revise AI's questions and review his transcript	2.30	\$0.00	\$0.00
01/10/2017	receive and review email from opposing counsel; 4 telephone conferences with clients re damages	0.80	\$0.00	\$0.00

01/11/2017	meeting with Mike Baxley re additional documents, receive and review additional forms re promise from City	0.60	\$0.00	\$0.00
06/20/2017	review exhibits; revise trial documents and questions	4.60	\$0.00	\$0.00
10/16/2017	prepare for trial and meet with clients	4.60	\$0.00	\$0.00
10/17/2017	prepare for trial	7.70	\$0.00	\$0.00
10/18/2017	prepare for and attend trial before Judge Nicholson	11.40	\$0.00	\$0.00
10/19/2017	prepare for and attend trial	5.50	\$0.00	\$0.00
11/10/2017	work on draft order per judge's instructions	4.80	\$0.00	\$0.00
12/01/2017	Review, edit, and supplement proposed order	0.90	\$0.00	\$0.00

Total = 74.7 hours

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alvar R. Rissanen, Michael H.)
Baxley, Clifford W. Forner, and)
Willie L. Hood,)
)
Plaintiffs,)
)
v.)
)
City of North Charleston,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-3210

**DEFENDANT'S OBJECTIONS TO
PLAINTIFFS' AFFIDAVIT IN
SUPPORT OF AWARD OF
ATTORNEYS' FEES**

FILED
2018 MAR -2 PM 3:45
JULIE L. ARMSTRONG
CLERK OF COURT

Defendant City of North Charleston ("City"), pursuant to the Court's Order dated February 6, 2018, and entered by the Clerk of Court on February 9, 2018 (the "Order"), provides this response to Plaintiffs' Counsel's Affidavit in Support of Attorneys' Fees (the "Affidavit").

STATEMENT OF THE CASE

This is a promissory estoppel case. Plaintiffs Alvar R. Rissanen ("Rissanen"), Michael H. Baxley ("Baxley"), Willie L. Hood ("Hood") and Clifford W. Forner ("Forner") (collectively, the "Plaintiffs"), assert a single cause of action against the City for promissory estoppel. In general, Plaintiffs seek to force the City to provide each of them, and their eligible dependents, post-retirement healthcare benefits. Forner also requests other monetary damages.

The case was tried before the Court on October 18 and 19, 2017. On February 6, 2018, the Court issued its Order. On February 13, 2018, the City received written notice of the Court's Order. The City filed and served its Motion to Alter or Amend pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure on February 23, 2018, and provided a copy to the Court on Monday, February 26, 2018.

On February 20, 2018, Plaintiffs' counsel filed the Affidavit. Pursuant to the Order, the City offers its objections to the Affidavit.

OBJECTIONS

A. Plaintiffs Did Not Petition the Court for Attorneys' Fees and the Court's Order is in Error as to the Award of Attorneys' Fees

Plaintiffs' Affidavit is premature because Plaintiffs have not petitioned the Court for their fees, and the Court's Order contains insufficient and misplaced grounds for awarding attorneys' fees.

As discussed in the City's Motion to Alter or Amend, the award of fees and costs in the Order does not comply with S.C. Code Ann. § 15-77-300 *et seq.* First, Plaintiffs have not petitioned the Court for fees and costs in accordance with S.C. Code Ann. § 15-77-310. Second, the Order does not contain the requisite findings to award attorneys' fees. *See* S.C. Code Ann. § 15-77-300(B) (requiring Court make specific written findings as required by S.C. Code Ann. § 15-77-300(B)(1-5)). Third, the City, a municipality, is not subject to Plaintiffs' claim for attorneys' fees and costs because it is neither the "state" nor an "agency," pursuant to S.C. Code Ann. § 15-77-300 *et seq.* *See South Carolina Public Information Foundation v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Cl. App.2017) (noting "agency" is undefined in S.C. Code Ann. § 15-77-300 *et seq.*).

Moreover, neither the State of South Carolina nor the City filed the lawsuit, and Plaintiffs' lawsuit does not contest "state action." *See* S.C. Code Ann. § 15-77-300 (recognizing fees and costs are only recoverable in three circumstances: 1) "civil action brought by the State;" 2) civil action brought by "any political subdivision of the state;" and, 3) civil action brought by any party who is contesting *state* action.") (emphasis added).

For these reasons, the Affidavit should be rejected by the Court.

B. The Affidavit Contains Material Errors and/or Omissions

The Affidavit contains material errors and/or omissions that should cause the Court to reject the Affidavit. First, Paragraph 2 of the Affidavit states the City is a “state entity” pursuant to S.C. Code Ann. § 15-77-300. For the reasons discussed above in Section A, the City is not a “state entity” as the term is used in S.C. Code Ann. § 15-77-300.¹

Second, the Affidavit fails to include, by way of attachment or otherwise, copies of the contingency fee agreements by and between each Plaintiff and Plaintiffs’ counsel. The omission of copies of these contingency fee agreements is material to the Affidavit, and material to the Court’s consideration of attorneys’ fees, because of the following assertion in Paragraph 6 of the Affidavit: “The provision in S.C. Code § 15-77-300 which limits the attorney fees to what the parties contracted to pay the attorney does not apply here.” In short, the Affidavit asserts, without sufficient support, that the Court awarding attorneys’ fees based on an hourly rate results in a lesser award of attorneys’ fees than what the attorneys’ fees would equate to if Plaintiffs’ contingency fee agreement(s) were applied. However, without the contingency fees agreements being provided to the Court, neither the Court nor the City can adequately consider, analyze or dispute the Affidavit in this respect.

Third, the Affidavit asserts the life expectancy of Plaintiffs Hood, Rissanen and Baxley is twenty years. However, the Affidavit is wrong and inconsistent with the current, applicable life expectancy table contained in S.C. Code § 19-1-150. For instance, Hood, at the time of trial, was seventy-one years of age. Therefore, pursuant to S.C. Code § 19-1-150, his life expectancy is 12.66 years, as opposed to the “twenty years” stated in the Affidavit. Further, Rissanen, at the

¹ Paragraph 2 of the Affidavit also incorrectly states a jury returned a verdict.

time of trial, was sixty-six years of age. Applying S.C. Code § 19-1-150 to Rissanen, his life expectancy is 16.08 years, not “twenty years.” Like Rissanen, Baxley was sixty-six years of age at the time of trial. Thus, applying S.C. Code § 19-1-150, Baxley’s life expectancy is 16.08 years. Finally, applying S.C. Code § 19-1-150, even Forner’s life expectancy is only 16.80 years once he reaches sixty-five years of age and is Medicare eligible in 2024. In short, the Affidavit is materially wrong, and unreliable, in its assertion Plaintiffs each have a twenty-year life expectancy beyond age sixty-five and Medicare eligibility.

Fourth, the Affidavit, “assumes” a 2.5% “rate of inflation” with regard to the cost of a Medicare supplement, without any support in the Affidavit or reference to any support in the trial record. The application of such “rate of inflation” is inappropriate without sufficient, supporting evidence in the record, and the use of it in the Affidavit should be rejected by the Court.

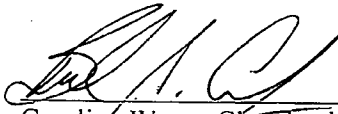
Fifth, the Affidavit contains the following, inaccurate assertion: “Plaintiffs testified the monthly cost of a Medicare supplemental policy is \$137.66” However, the statement is neither consistent with the record, including Plaintiffs’ testimony, nor supported by the record. Moreover, and as noted in the City’s Motion to Alter or Amend, the Order contains no mention of or specific requirement about what type of Medicare supplement Plaintiffs are to purchase and to then receive reimbursement for from the City.² Moreover, the Order contains no mention of or specific requirement pertaining to the level and/or scope of coverage Plaintiffs may purchase and receive reimbursement for from the City.

For these reasons, the Court should reject the Affidavit.

² The Court makes no findings, including findings of fact, about this issue in the Order. Medicare supplement plans are of many types and consist of varying benefit levels. *See* 42 U.S.C. § 1395ss.

CONCLUSION

For the reasons discussed above, the City respectfully requests the Court reject the Affidavit. Moreover, the City requests a hearing regarding any petition for attorneys' fees.



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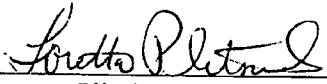
ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
February 28, 2018

CERTIFICATE OF SERVICE

This is to certify that I have this 28th day of February, 2018, caused to be served a copy of Defendant's Objections to Plaintiffs' Affidavit in Support of Attorneys' Fees on all counsel by depositing in the mail and addressed to:

Nancy Bloodgood, Esquire
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464



Loretta Plitnick

This 28th day of February 2018.

FILED
2018 MAR -2 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alvar R. Rissanen, Michael H.)
Baxley, Clifford W. Forner, and)
Willie L. Hood,)
)
Plaintiffs,)
)
v.)
)
City of North Charleston,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-3210

**DEFENDANT'S MOTION TO
ALTER OR AMEND**

FILED
2018 FEB 23 PM 2:55
JULIE J. ARSHING
CLERK OF COURT

Defendant City of North Charleston ("City"), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, moves for an order amending and/or altering the Court's Order dated February 6, 2018, and entered by the Clerk of Court on February 9, 2018 (the "Order"). The City received written notice of entry of the Order on Tuesday, February 13, 2018.

STATEMENT OF THE CASE

This is a promissory estoppel case. Plaintiffs Alvar R. Rissanen ("Rissanen"), Michael H. Baxley ("Baxley"), Willie L. Hood ("Hood") and Clifford W. Forner ("Forner") (collectively, the "Plaintiffs"), assert a single cause of action against the City for promissory estoppel. In general, Plaintiffs seek to force the City to provide each of them, and their eligible dependents, post-retirement healthcare benefits. Forner also requests other monetary damages.

The case was tried before the Court on October 18 and 19, 2017. On February 6, 2018, the Court issued its Order. On February 13, 2018, the City received written notice of the Court's Order. The City now offers this Motion to Alter or Amend pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure.

LEGAL STANDARD

South Carolina Rule of Civil Procedure 52(b) allows a party “not later than 10 days after receipt of written notice of entry of judgment” to request that the court “amend its findings or make additional findings and may amend the judgment accordingly” Rule 52(b), SCRCP, further requires that “[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after filing the motion.” Correspondingly, and similarly, South Carolina Rule of Civil Procedure 59(e) allows a party to request a court alter or amend a judgment within ten days of receiving the written notice of entry of an order.

LEGAL ARGUMENTS

A. The Order Fails to Address Whether Plaintiffs’ Claims Were Filed Beyond the Applicable Statute of Limitations

In the Order, the Court concludes the doctrine of equitable estoppel precludes the City from asserting, or otherwise claiming, the statute of limitations as an affirmative defense. However, absent from the Order is a preceding finding by the Court that Plaintiffs did file their respective claims beyond the time allowed by the applicable statute of limitations. In short, the Order leaps to the doctrine of equitable estoppel without, correspondingly and necessarily, stating/finding Plaintiffs did file their respective claims beyond the applicable statute of limitations.

The Court should alter or amend the Order to add three, necessary findings: 1) applicable statute of limitations; 2) date the applicable statute of limitations expired as to each Plaintiff; and, 3) each Plaintiff filed his respective claims beyond the applicable statute of limitations.

B. The Order Fails to Address Whether a Promise for Future Benefits is an Unenforceable Violation of Public Policy

S.C. Const., art. X, § 14, entitled “Bonded Indebtedness of Political Subdivisions” controls the City incurring debt. For instance, section 2 of the article states the following:

Such political subdivisions shall have the power to incur indebtedness in the following categories *and no other*: (a) General obligation of debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section [i.e., revenue bonds and tax increment financing bonds]. (emphasis added.)

The City can only obtain general obligation debt "upon such terms and conditions as the General Assembly shall prescribe by law" and must involve the delivery of "a schedule showing the date and the principal and interest payments to become due" See, art. X, § 14 (2) and (5). Consequently, the City is prohibited by the South Carolina Constitution from incurring an undefined obligation for future payments on behalf of former employees, including the four Plaintiffs (retirees) in this case.

The Order fails to address this issue as previously raised by the City.

C. The Order Fails to Mention or Address the City's Budget Ordinance

The City operates under a mayor-council form of government. Under the City's mayor-council form of government, Mayor Summey has certain administrative responsibilities and powers. S.C. Code Ann. § 5-9-30. However, City legislative powers, including the adoption of an annual budget, by way of a budget *ordinance*, and associated committal and expenditure of City funds, are vested with City Council. S.C. Code Ann. § 5-9-40 ("The council shall adopt an annual budget for the operation of the municipality and capital improvements.").

"One council may not by an ordinance bind itself or its successors so as to prevent *free legislation* in matters of municipal government." *Wright v. City of Florence*, 229 S.C. 419, 424-25, 93 S.E.2d 215, 218 (1956) (emphasis added). Second, "a council may not by contract bind its successors to forego or to exercise their legislative functions." *Newman v. McCullough*, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) (quotations and citations omitted).

The funds the City utilizes to provide healthcare benefits to employees and retirees come from the *yearly* budget appropriations approved by City Council. City Council's yearly appropriation of funds for healthcare benefits, by way of a budget ordinance, is a legislative function. *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992); S.C. Code Ann § 5-9-40. *See also Piedmont Public Service Dist. v. Cowart*, 319 S.C. 124, 13, 459 S.E.2d 876, 880 (Ct. App. 1995) ("If the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils."); *Cunningham v. Anderson County*, 402 S.C. 434, 441-450, 741 S.E.2d 545, 549-553 (Ct. App. 2013) *aff'd* 414 S.C. 298, 299, 778 S.E.2d 884, 885 (2015) (County council cannot enter into a contract binding successor councils).

The City's adoption of an ordinance or resolution, including the yearly budget ordinance, "is a legislative enactment and presumed to be constitutional." *Sandlands C & D, LLC v. County of Horry*, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011) (quoting *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010)). In considering whether a City ordinance is constitutional, the City's "powers . . . should be liberally construed." *Id.* (citing S.C. Const. art. VIII, § 17.) *See also Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013) (separation of powers doctrine expressed in S.C. Const. art. I, § 8 prohibits judicial interference in legislative functions); *Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 121-122, 691 S.E.2d 453, 460-461 (2010) (challenge to the "wisdom, policy or expediency of an [legislative] act" presents a "nonjusticiable political question"); *Smith v. Tiffany*, S. C. Op. No. 27715 (April 26, 2017) at p. 8 ("a court may not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result.").

“The primary purpose in interpreting statutes [ordinances] is to ascertain and effectuate the intent of the legislature [City Council].” *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (citing *Cain v. Nationwide Prop. and Cas. Ins. Co.*, 378 S.C. 25, 29, 661 S.E.2d 349, 351 (2008)). “Under the plain meaning rule, it is not the Court’s place to change the meaning of a clear and unambiguous statute.” *Id.* (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). “It is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.” *Id.* (quoting *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (internal quotations omitted)).

The City’s *legislative* actions, including the passage of yearly budget ordinances, are “harmonious.” In short, the City by approval of its lawful, mandated, budget ordinances (i.e. by legislative action), chose to either fund or not fund retiree access to the City’s self-funded healthcare plan. By legislative action, including the passage of the 2009-2010 budget ordinance, the City lawfully changed retiree access to the City’s healthcare plan, including the costs to City retirees.

The City’s legislative actions are consistent with the history of the City ordinance 1984-23 and the subsequent City budget ordinances. Moreover, the City’s actions neither provide a basis for Plaintiffs’ allegation of a “promise” by the City nor their assertion that their alleged reliance was either justifiable or foreseeable. *See Alston v. City of Camden*, 322 S.C. 38, 48, 471 S.E.2d 174, 179 (1996) (health insurance is a fringe benefit subject to *prospective* modification and there can be no reasonable expectation that the terms of such benefits will remain unchanged.)

The Order fails to address this issue as previously raised by the City.

D. The Order is Ill-Defined as to Future Mandated Payments by the City to Plaintiffs and in Regard to the Type of Medicare Supplement Plaintiffs May Request Reimbursement for Purchasing

First, in the Order, the Court makes no finding as to the amount of reimbursement the City is required to pay to Plaintiffs Rissanen, Baxley and Hood. The Court should alter and/or amend the Order to specify the amount the City is to pay as reimbursement to Plaintiffs Rissanen, Baxley and Hood.

Second, the Order requires each Plaintiff submit an annual request for reimbursement to the City for their cost for a Medicare supplement. However, the Order contains no requirement as to precisely when (i.e. the date) the request for reimbursement is to be submitted to the City each year and, correspondingly, the Order contains no requirement as to when (i.e. date) the City is to then provide the reimbursement. The Order only states the reimbursement is to be made "promptly." The Court should alter and/or amend the Order to provide specific dates.

Third, the Order contains no direction, constraints or requirements as to whether the City is required to provide reimbursement if a Plaintiff fails to submit their request for reimbursement by a certain date each year. The Order should contain a provision that absolves the City of making reimbursement if a Plaintiff fails to submit his request by a stated date each year.

Fourth, the Order contains no mention of or specific requirement about what type of Medicare supplement Plaintiffs are to purchase and to then receive reimbursement for from the City.¹ Moreover, the Order contains no mention of or specific requirement pertaining to the level and/or scope of coverage Plaintiffs may purchase and receive reimbursement for from the City.

¹ The Court makes no findings, including findings of fact, about this issue in the Order. Medicare supplement plans are of many types and consist of varying benefit levels. *See* 42 U.S.C. § 1395ss.

The Court should alter and/or amend the Order to provide specificity as to the type and scope of Medicare supplement Plaintiffs may obtain reimbursement for obtaining.

E. Award of Fees and Costs in Order Does Not Comply with S.C. Code Ann. § 15-77-300 *et seq.*

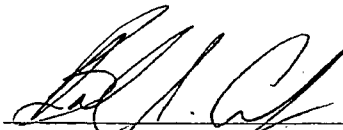
The award of fees and costs in the Order does not comply with S.C. Code Ann. § 15-77-300 *et seq.* First, Plaintiffs have not petitioned the Court for fees and costs in accordance with S.C. Code Ann. § 15-77-310. Second, the Order does not contain the requisite findings to award fees and costs. *See* S.C. Code Ann. § 15-77-300(B) (requiring Court make specific written findings as required by S.C. Code Ann. § 15-77-300(B)(1-5)). Third, the City, a municipality, is not subject to Plaintiffs' claim for fees and costs because it is neither the "state" nor an "agency," pursuant to S.C. Code Ann. § 15-77-300 *et seq.* *See South Carolina Public Information Foundation v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017) (noting "agency" is undefined in S.C. Code Ann. § 15-77-300 *et seq.*).

Moreover, neither the State of South Carolina nor the City filed the lawsuit, and Plaintiffs' lawsuit does not contest "state action." *See* S.C. Code Ann. § 15-77-300 (recognizing fees and costs are only recoverable in three circumstances: 1) "civil action brought by the State;" 2) civil action brought by "any political subdivision of the state;" and, 3) civil action brought by any party who is contesting *state action*." (emphasis added).

For each of these reasons, the Court should alter or amend the Order.

CONCLUSION

For the reasons discussed above, the City respectfully requests the Court alter and/or amend its Order.



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ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
February 23, 2018

CERTIFICATE OF SERVICE

This is to certify that I have this 23rd day of February, 2018, caused to be served a copy of Defendant's Motion to Alter or Amend on all counsel by depositing in the mail and addressed to:

Nancy Bloodgood, Esquire
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464



Loretta Plitnick

This 23rd day of February, 2018.

FILED
2018 FEB 23 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Alvar R. Rissanen; Michael H. Baxley;	)	Case No.: 2013-CP-10-3210
Clifford W. Forner; and Willie L. Hood,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' MEMORANDUM
	)	RESPONSE TO DEFENDANT'S MOTION
	)	TO ALTER OR AMEND
City of North Charleston,	)	
	)	
Defendant.	)	

FILED
 MAR 16 PM 12:19
 CLERK OF COURT

Plaintiffs respectfully submit this Memorandum in Response to Defendant's Motion to Alter or Amend the Court's judgment in their favor.

LEGAL ARGUMENTS

1. **Contrary to Defendant's argument, the Court's Order does not fail to address whether Plaintiff's claims were filed beyond the applicable Statute of Limitations.**

The Court made the following Findings of Fact in its Order:

35. "Between 2009 and 2011, the Mayor met with Plaintiffs Rissanen and Baxley and Plaintiffs Rissanen and Baxley were assured by the Mayor, City Council members, and HR personnel that they would be not treated differently as they had already they retired so they were grandfathered. Plaintiffs Rissanen and Baxley relayed this information to the other Plaintiffs and retirees.

36. The former HR Director, Bob Canella, repeatedly assured Plaintiff Rissanen he would be grandfathered.

37. City Councilmembers Rhonda Jerome and Bob King assured Plaintiff Baxley he would be grandfathered.

38. The City's HR Department also assured Plaintiff Rissanen in writing he would be "grandfathered" through a 2011 email." (This email was made an exhibit at trial.)

The Court specifically addressed the statute of limitations issue in its conclusions of law on pages 13-14 of the Order, stating:

Plaintiffs' claims are not barred by the statute of limitations. Plaintiffs had many discussions with Defendant's Mayor and HR personnel after receiving the Mayor's letter in May of 2009. For at least two years after May of 2009, Defendant continued to represent that Plaintiffs would be "grandfathered." The Mayor's May 2009 letter stated that proposed changes would go into effect in June 2010 inferring that employees retiring before June 1, 2009 would be treated differently than employees retiring after June 1, 2009. A memorandum authored by Mayor Summey confirmed that grandfathering was being discussed. Plaintiffs were not on notice that Defendant had decided not to grandfather them until after 2011. As late as 2011, Mayor Summey told Plaintiffs he wanted to keep the promise and would try to find a way to do so. Plaintiffs testified they knew the Mayor was an outstanding mayor who could make things happen, and was a man of his word. As late as 2011, the Mayor was directing City employees to find a way to help Plaintiffs.

The Court went on to conclude as a matter of law, "[A] defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007) (quoting *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997)). Here, the Mayor and the City's HR and administrative personnel continued over the course of many months after the Mayor's 2009 letter to assure Plaintiffs verbally and in writing that they would be grandfathered; the City even arranged for Plaintiffs to meet with an insurance company. The City's conduct was intended to, and did, induce the Plaintiffs to hold off filing a law suit as they believed that the promises made to them would be kept."

The issue of the application of the Statute of Limitations to the facts in this case was, thus, addressed, considered and decided by the Court in its Order.

2. Contrary to Defendant's argument, the Order did not fail to address whether a promise for future benefits is an unenforceable violation of public policy.

The Court addressed at length and ruled on whether the promise concerned wages or future benefits on pages 12 and 13 of its Order, citing to a Court of Appeals case that has already addressed this issue:

"The promise in this case involved payment of money, or additional wages, and a promise of wages in the future can be part of an employee's salary. The South Carolina Payment of Wages Act defines wages as "*all amounts at which labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee *under any employer policy or employment contract.*" *S.C. Code § 41-10-10* (emphasis added). The future wages promised to Plaintiffs are compensation for work which had already been performed by them. Plaintiffs worked for the City for the requisite number of years to obtain insurance that would cost them nothing (or almost nothing in Plaintiff Forner's case) and, thus, the promise had significant value which is an easily ascertainable monetary amount. Further, in *Bishop*, the Court of Appeals referred to the promise of retiree health insurance as a promise for "free" insurance, indicating its agreement that the promise involved the money value of the insurance and not just a future benefit.

Retirees also testified that several supervisors informed them they would receive *free* health insurance for life during their individual merit interviews and evaluations, which were incidental to the supervision of their employment. Therefore, the employment review context during which the representations were made provides a scintilla of evidence to

suggest the representations and promises were within the supervisors' authority and reasonably relied upon.

Bishop v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013) (emphasis added).

The Court of Appeals considered and ruled that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now - that a claim for benefits rather than a claim for money. This Court is bound by the Court of Appeals' decision as to this issue. By allowing the *Bishop* case to go forward, the Court of Appeals rejected Defendant's argument that the promise was unenforceable because it was a promise for future benefits."

The Court's Order acknowledges that a promise to pay the cost of retiree health insurance for employees who work a certain number of years is a promise regarding money, as did the Court of Appeals in the *Bishop* case. There is no merit in Defendant's argument that this issue was not addressed.

3. Contrary to Defendant's argument, the Order does not need to address the City's Budget Ordinance.

In its Order, the Court found, "Plaintiffs testified they trusted HR Director Bob Cannella and Mayor Summey when they made promises about free health insurance for retirees because Bob Cannella and Mayor Summey had authority as Mayor and Finance Department Head to make those promises. Additionally, they testified (and the Mayor agreed) that the Mayor had made the promises repeatedly through the years at staff meetings and luncheons and at different fire stations to hundreds of employees. Plaintiffs testified they knew they could count on the Mayor because he had never broken a promise to them and was a man of his word. It is

undisputed that the Mayor confirmed the promises made in his 1998 Memo verbally on many occasions.”

The Court additionally found, “Defendant’s Mayor used the promise of free retiree health insurance as a recruiting tool to keep firefighters, including Plaintiffs, employed by the City. Plaintiffs testified when firefighters would complain about low wages or consider leaving the City, Defendant’s Mayor would point to the promise of free retiree health insurance and boast to the employees, “You’ve got a honey of a deal.”

Then, citing the *Bishop* case, the Court held:

The acts of a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality. *Charleston Cnty. v. Nat’l Advert. Co.*, 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987); *Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985) (“Government agents, acting within the proper scope of their authority, can by their acts give rise to estoppel against a municipality.”) *Bishop v. City of Columbia*, 401 S.C. 651, 665, 738 S.E.2d 255, 262(Ct. App. 2013)

As the authorized acts of an administrator can give rise to a claim for estoppel, the acts or non-acts of a legislative body are irrelevant.

- 4. Contrary to Defendant’s argument, the Order addresses how much the City is required to pay Plaintiffs and is concise as to the amount of damages, which are necessarily speculative as the promise ended when the lives of the Plaintiffs end.**

Although the Court possesses many powers, it cannot predict the date of death of the four Plaintiffs. An award of damages over the course of their lives is a precise award. The award is not ambiguous; it ends at their death. The amount of the award is also clear; it is the amount of money each Plaintiff pays for a supplemental Medicare Policy each month. The Court found, “Three (3) of the Plaintiffs are currently paying between \$130.00 and \$140.00 every month to

purchase a Medicare Supplement Policy (or about \$1,680.00 annually.) The Plaintiffs testified that the cost of a Medicare Supplement Policy increases each year.”

5. Contrary to Defendant’s argument, the award of attorney fees is appropriate under S.C. Code Ann. § 15-77-300.

As the Court stated on page 16 of its Order, “Plaintiffs are entitled to attorney fees as they prevailed against a state entity. S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:(1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

Id.

Defendant is a municipal corporation authorized under the State Constitution and State law. Municipal corporations only exist when they are created by the State. Municipalities are agents of the State as an agent is one who acts in place of another by authority from him or one who acts in some matter pertaining to the administration of government per Black’s Law Dictionary. This is exactly what municipalities when they are created per the State Constitution and State law.

Specifically, Article VIII Section 8 states the General Assembly shall provide by general law the criteria and the procedures for the incorporation of new municipalities. Further, S.C. Code Ann. § 5-1-10 states, “A municipality having a certificate of incorporation issued by the Secretary of State and a township established by act of the General Assembly are declared to be perpetual bodies, politic and corporate, entitled to exercise all the powers and privileges provided for municipal corporations in this State, and subject to all the limitations and liabilities provided for municipal corporations in this State. “Municipality” means a city or town issued a

certificate of incorporation, or township *created by act of the General Assembly*. S.C. Code Ann. § 5-1-20 (emphasis added). S.C. Code Ann. § 5-1-26 requires that upon receipt of a filing for a proposed municipal incorporation, the Secretary of State shall transfer a copy of the filing to the Joint Legislative Committee on Municipal Incorporation for review who makes a recommendation to the Secretary of State whether the area meets the minimum State statutory service standard incorporation requirements. Counties and cities are both creations of State constitutional and statutory law and there is no basis to distinguish between them for purposes of this Statute.

Plaintiffs are the prevailing party in this matter and the City, an agency of the State, acted without substantial justification when it broke its promise, so the Court's Order regarding attorney fees is appropriate.

CONCLUSION

Plaintiffs respectfully request this Honorable Court deny Defendant's Motion to Alter or Amend.

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Charleston, South Carolina

Date: 3-15-2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Alvar R. Rissanen; Michael H. Baxley;
Clifford W. Forner; and Willie L. Hood,
Plaintiffs,
vs.
City of North Charleston,
Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2013-CP-10-3210

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM RE S.C. CODE
SECTION 15-77-300**

FILED
2018 MAR 28 AM 9:28
JULIE J. BRYSTRONG
CLERK OF COURT
BY

Plaintiffs respectfully submit this Memorandum pursuant to the Court's request.

S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

Id. (emphasis added)

There is no legal basis for Defendant's contention that S.C. Code § 15-77-300 does not apply to municipalities because municipalities are political subdivisions of the State in the same manner as counties.

Municipalities, like counties, are authorized under the State Constitution and State law. Municipal corporations only exist when they are created by the State. Municipalities are agents of the State as an agent is one who acts in place of another by authority from him or one who

acts in some matter pertaining to the administration of government; this is exactly what municipalities when they are created per the State Constitution and State law.

Specifically, Article VIII Section 8 states the General Assembly shall provide by general law the criteria and the procedures for the incorporation of new municipalities. Further, S.C. Code Ann. § 5-1-10 states, "A municipality having a certificate of incorporation issued by the Secretary of State and a township established by act of the General Assembly are declared to be perpetual bodies, politic and corporate, entitled to exercise all the powers and privileges provided for municipal corporations in this State, and subject to all the limitations and liabilities provided for municipal corporations in this State. "Municipality" means a city or town issued a certificate of incorporation, or township *created by act of the General Assembly.*" S.C. Code Ann. § 5-1-20 (emphasis added). S.C. Code Ann. § 5-1-26 requires that upon receipt of a filing for a proposed municipal incorporation, the Secretary of State shall transfer a copy of the filing to the Joint Legislative Committee on Municipal Incorporation for review who makes a recommendation to the Secretary of State whether the area meets the minimum State statutory service standard incorporation requirements. Counties and cities are both creations of State constitutional and statutory law and there is no basis to distinguish between them for purposes of this Statute.

State tax law also acknowledges municipalities are political subdivisions of the State. Specifically, every year the General Assembly directs a certain percentage of the general fund be distributed to local governments through the Aid to Political Subdivisions program. Pursuant to S.C. Code Ann. § 12-37-450:

A county and municipality must be reimbursed for the revenue lost as a result of the business inventory tax exemption based on the 1987 tax year millage and 1987 tax year assessed value of inventories in the county and

municipality. The reimbursement amount must be redistributed proportionately to the separate millages levied *by the political subdivision within the county for the current tax year millage. There is credited annually, as provided in Section 11-11-150, to the Trust Fund for Tax Relief whatever amount is necessary to reimburse fully all counties and municipalities the required amount.* (emphasis added)

In Charleston County in the 1990's, there were issues about the legitimacy of the Town of James Island twice and the City of Charleston prevailed in court twice in their attempts to "unincorporate" the Town of James Island and obtain reimbursement of "aid to political subdivision funds" that had been paid by the State to the Town of James Island (instead of to the City of Charleston and the County.) Undersigned counsel represented the County in that litigation and knows that the City of Charleston requested and was awarded attorney fees under S.C. Code 15-77-300 by the Circuit Court as the City of Charleston was the prevailing party against the Town of James Island. (The County did not request attorney fees.)

Further, the Legislature has specifically acknowledged that municipalities are political subdivisions of the State in the South Carolina Tort Claims Act:

Consequently, it is declared to be the public policy of the State of South Carolina that the State, *and its political subdivisions*, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion.

The provisions of this chapter establishing limitations on and exemptions to the liability of the State, *its political subdivisions*, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State. S.C. Code Ann. § 15-78-20 (emphasis added)

The Tort Claims Act has been repeatedly and consistently applied against municipalities which the Legislature and the courts have consistently acknowledged are political subdivisions

under this Act. See, e.g., *Rolandi v. Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987) (“Where a resident filed suit against the city for damage to her property resulting from the backup of sewage from a sanitary sewer line and where the city provided evidence of a lack of liability insurance at the time of the incident, the claims against the city were barred by the doctrine of sovereign immunity pursuant to S.C. Code Ann. § 15-78-20(c), and the trial court properly granted the city’s motion for summary judgment.”)

Most of the cases awarding attorney fees under S.C. Code §15-77-300 occur at the circuit court level so the decisions are not published. However, recently, the Court of Appeals upheld an award of attorney fees against a charter school. A charter school was found to be an agent of the State as it was created by State law and part of the public school system. In *McNaughton v. Charter School for Math and Science*, undersigned counsel argued attorney fees could be awarded against “any party who is contesting state action.” The trial court found that as local charter schools are part of the local school district in which they are located, Defendant was part of the public school system and a state entity subject to the provisions of S.C. Code § 15-77-300 (citing *Camp v. Sarratt*, 291 S.C. 480, 481, 354 S.E.2d 390, 391 (1987) (every school district is and shall be a body politic and corporate of the State of South Carolina)). The lower court’s order regarding this issue was summarily upheld by the Court of Appeals. *McNaughton v. Charter School for Math and Science* (Court of Appeals decision attached). Here, the City of North Charleston is a body corporate of the State of South Carolina.

In short, a municipality is a creation of the State, a political subdivision, and a body corporate of the State of South Carolina. Therefore, any person contesting action by a municipality who is the prevailing party can be awarded attorney fees under S.C. Code § 15-77-300 in the same manner as a person contesting action by a county or a local charter school.

BLOODGOOD & SANDERS, LLC

Nancy Bloodgood

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Lucy C. Sanders, SC Bar No.: 78169

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Mt. Pleasant, SC 29464

Telephone: (843) 972-0313

Email: nbloodgood@bloodgoodsanders.com

lsanders@bloodgoodsanders.com

Attorneys for Plaintiffs

Charleston, South Carolina

Date: 3/26/2018



Memorandum

City of North Charleston

R. Keith Summey
Mayor

TO: Members of Finance Committee

RE: Health Insurance for
Retired Employees

DATE: May 13, 1998

Since I was first elected to office, one of my aspirations was to provide insurance benefits for individuals retiring from the City. Currently, any employee retiring from the City may elect to pay for coverage of health insurance at the same rate paid by the City. Our employees are our greatest resource and extending health insurance to those retiring from the City payroll will provide a very useable benefit. Many organizations have this as a part of their benefit package.

I would propose for committee consideration, a staggered premium sharing for cost.

<u>Employee retiring with years of service</u>	<u>Employee Share / City Share</u>	
15 Years	50 %	50 %
20 Years	33.4%	66.6%
25 Years	16.8%	83.2%
30 Years	0 %	100 %

Once the retired employee reaches the age of medicare eligibility, then the City would purchase a medicare supplement policy. This coverage would be strictly for the employee and would not cover any family members. An employee would be able to enroll a spouse or family at the normal rates.

Thank you and I hope you are all inspired to support this proposal to provide the peace of mind to those who retire from at least 15 years of dedication and devotion to serving the City.

RKS



OFFICE OF THE MAYOR

City of
North Charleston
SOUTH CAROLINA

R. KEITH SUMMEY
MAYOR

May 4, 2009

To All Retirees of the City of North Charleston,

During our budget workshop held Friday, May 1, 2009, the Council and I voted to recommend for final approval a general fund budget totaling \$82,293,051 for the fiscal year ending June 30, 2010. This represents a 9.5% reduction from the 2009 budget and is perhaps the most difficult budget any City Council has faced during its 37 years of existence. While reducing the operating and capital expenses for next year by over 11% from last year's approved budget, we are still not able to balance the 2010 budget without impacting personnel costs and the fringe benefits our employees and retirees have enjoyed for so many years.

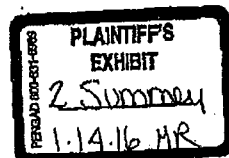
A major change to retiree healthcare benefits is necessary as state and local governments are now required to account for and report the cost of providing "Other Postemployment Benefits" (OPEB or retiree benefits) to their current and future retirees. No longer can the City of North Charleston account for these benefits under a "pay-as-you-go" plan but rather must advance fund the costs through a trust plan. Funding retiree benefit obligations has become a major concern for governments and private businesses driven by the fact that employees are retiring at an earlier age and living longer. These factors have resulting in increased liabilities for employers.

As it relates to retiree healthcare benefits, we are requiring employees retiring as of or after July 1, 2009 to meet new eligibility provisions and pay increased shared cost. Retirees in the plan prior to June 30, 2009 will enjoy the existing benefits except for one major change. *Once a retiree becomes eligible for medicare, all healthcare benefits provided by the City of North Charleston will cease. This change will become effective June 30, 2010.* If you should have any questions relative to these changes, please do not hesitate to contact our Human Resources Department.

We are confident that by working together, our employees, retirees and the citizens of the City of North Charleston will successfully face the challenges of this economy. It is always difficult to tighten our belts and make sacrifices; but our combined efforts will mean that we continue to provide the best possible services to our citizens. Together, we will lead North Charleston toward a better and more prosperous future.

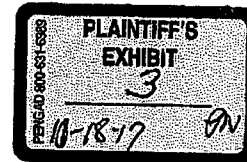
Sincerely,

R. Keith Summey
Mayor



Post Office Box 190016 • North Charleston, S.C. 29419-8016 • Telephone (843) 740-2804 • Fax (843) 745-1005
www.northcharleston.org

Exhibit 2



Dixon, David (MIS)

From: Ruth, Christine
Sent: Tuesday, June 21, 2011 7:34 AM
To: Elmore, Julie
Subject: Fw:

FYI. I spoke with Ed yesterday,

Connected by DROID on Verizon Wireless

-----Original message-----

From: Edward Astle <northcharleston@edastle.us>
To: Chris Ruth <cruth@northcharleston.org>
Sent: Mon, Jun 20, 2011 23:15:51 GMT+00:00
Subject: Fw:

1st one

----- Original Message -----

From: Alvar Rissanen
To: Ed Astle
Sent: Monday, June 20, 2011 1:05 PM

Thx. Ed for patiently listening. I did not mean to sound so persistent, but sometimes I tend to become overly dramatic on issues, without intentionally meaning to do so. I guess I was surprised that you or possibly Council was not aware of this matter.

This year as last, Retirees are facing a +/- increase of approx. 10% in their monthly dependant (w/dental) health benefit premiums.

I assume that the cost of such has continued to go up across the board for all (employees, Mayor, Council and retirees) without distinction.

However, I understand that the City has chosen to not increase the premium amount for its employees, w/dependant coverage, this year (I don't know if they had an increase last year, or not).

While I understand that Health Care is going up, and I really appreciate the Health Care benefits that the City has extended to it's retirees, I am concerned that in this case it appears that the retirees (w/dependants) may not have been considered by the Mayor and Council.

Do you know what the overall cost, per employee, is for the health benefit package (w/dependant, prescription and dental).

Thx. again, and again I didn't mean to be so dramatic. I still love the City and I remain loyal to all.

Dixon, David (MIS)

From: Ruth, Christine
Sent: Tuesday, June 21, 2011 4:28 PM
To: Edward Astle
Subject: RE:

Good afternoon Ed,

Here is how I think you should respond. What do you think? If you need to make a change to make it sound as more friendly from your Council representative, then please do so. If you have any questions please give me a call.

After speaking with our Director of Human Resources, Christine Ruth, she informs me that the cost of health care coverage has continued to increase and will, unfortunately, continue to increase in the future. The increase for 2011-2012 was calculated at the normal rate or value of the health benefit coverage for family coverage. The amount you are paying for dependent coverage is the difference between the single coverage amount and the amount the City charges for Family coverage on COBRA which is \$1,652.38 per month. For example, as a retiree with 35 years of service you do not pay anything for your coverage because you are grandfathered and retired prior to July 1, 2009 when it changed. The value of your monthly benefit that you receive from the City of North Charleston is \$550.06. As a retiree this amount has also continually increased since your retirement date. To keep your dependent on coverage beginning July 1, 2011 you would need to pay \$1,102.32 monthly. Chris assured me that the City has consistently calculated the rates for the retiree group based on the amounts provided to the City by our third party administrator and stop loss carrier.

Additionally, Chris informs me that you could drop the dental coverage and save \$50.00 per month, or \$600.00 annually and enroll for medical and prescription coverage for single and dependent with no dental coverage. Another option available to you is to look at other non-group plans available for your dependents through other health insurance agencies. Perhaps there is a plan that would be more acceptable to you financially for dependent coverage. Currently as a retiree, you would be eligible to stay on our coverage FREE until you become eligible for Medicare. Keep in mind that this benefit amount that you receive from the City will also continue to increase too.

I hear your frustration regarding the increase in the health care premiums. Unfortunately, with the health care reform changes that will be implemented in the next several years, it is unknown if the rates will ever remain flat and not continually increase.

I hope this answers your questions.

Christine A. Ruth, PHR, IPMA-CP
Human Resources Department /Director
City of North Charleston
P.O. Box 190016, North Charleston SC 29418
Office: 843-740- 2593
Fax: 843-745- 1048 Fax
www.northcharleston.org
a great place to live, work, or play

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From: Edward Astle [mailto:northcharleston@edastle.us]
Sent: Monday, June 20, 2011 7:16 PM
To: Ruth, Christine
Subject: Fw:

1st one

----- Original Message -----

From: Alvar Rissanen

To: Ed Astle

Sent: Monday, June 20, 2011 1:05 PM

Thx. Ed for patiently listening. I did not mean to sound so persistent, but sometimes I tend to become overly dramatic on issues, without intentionally meaning to do so. I guess I was surprised that you or possibly Council was not aware of this matter.

This year as last, Retirees are facing a +/- increase of approx. 10% in their monthly dependant (w/dental) health benefit premiums.

I assume that the cost of such has continued to go up across the board for all (employees, Mayor, Council and retirees) without distinction.

However, I understand that the City has chosen to not increase the premium amount for its employees, w/dependant coverage, this year (I don't know if they had an increase last year, or not).

While I understand that Health Care is going up, and I really appreciate the Health Care benefits that the City has extended to its retirees, I am concerned that in this case it appears that the retirees (w/ dependants) may not have been considered by the Mayor and Council.

Do you know what the overall cost, per employee, is for the health benefit package (w/dependant, prescription and dental).

Thx. again, and again I didn't mean to be so dramatic. I still love the City and I remain loyal to all.

Dixon, David (MIS)

From: Ruth, Christine
Sent: Tuesday, June 21, 2011 4:38 PM
To: Edward Astle
Subject: RE: RE:

There are no different group rates applied for retirees. If an employee leaves the City of North Charleston and wishes to have COBRA continuation coverage for Family they would pay \$1,652.38 x 2% (Administrative Fee Allowed by COBRA law) = \$1,685.43 per month. For single it would be \$550.06 x 2% = \$561.06.

As discussed when I was at the Council Budget meeting, we are checking with our third party administrator and Stop Loss Carrier to do an analysis of a five tier system for next year to see if there would be any difference in the cost for the City instead of having a two-tiered system. Stay tuned! ☺

Christine A. Ruth, PHR, IPMA-CP
Human Resources Department /Director
City of North Charleston
P.O. Box 190016, North Charleston SC 29418
Office: 843-740- 2593
Fax: 843-745- 1048 Fax
www.northcharleston.org
a great place to live, work, or play

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From: Edward Astle [mailto:northcharleston@edastle.us]
Sent: Monday, June 20, 2011 7:16 PM
To: Ruth, Christine
Subject: Fw: RE:

2nd one

----- Original Message -----

From: Alvar Rissanen
To: Ed Astle
Sent: Monday, June 20, 2011 2:52 PM
Subject: RE:

Great! Ya Know, what I might be looking for is the Individual cost for retirees. I imagine that there is a different cost applied for retirees than regular employees, wouldn't you think? There may be a totally different Group Rate for each (Retiree vs. regular employee). Thx. again.

From: northcharleston@edastle.us
To: chief-rissanen@hotmail.com
Subject: Re:
Date: Mon, 20 Jun 2011 13:17:06 -0400

Al

No problem, I get like that my self. I will get with Chris and find out what is going on. Give me a few days.

Ed

City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
HUMAN RESOURCES DEPARTMENT CHRISTINE A. RUTH, DIRECTOR

May 11, 2012



Mr. Alvar Rissanen
7715 Peggy Drive
North Charleston, SC 29418

Dear Mr. Rissanen:

Last year we met with you to discuss your concerns regarding the increased premiums for dependent health care coverage. At that meeting we were asked to look for an alternative health care plan for your dependent/s.

We are pleased to inform you that Mr. Dave Kay from Southern Benefits will provide you with information and rates for a personal health care plan option for your dependent/s. Mr. Kay will be at City Hall on the following date and times if you are interested in learning more about alternative plans available for your dependents. At this meeting Mr. Kay will outline the specific terms and conditions for the other options that are available for your dependent/s should you wish to discontinue coverage for your dependent/s with the City's plan because of the cost.

Date	Time	Location
Thursday, May 17, 2012	10:00 a.m.	City Hall Building
	3:00 p.m.	Bulst Conference Room (3 rd Floor)

If you have any questions, please do not hesitate to contact Kathy Ross at 740-2596.

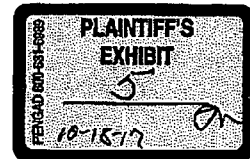
We look forward to seeing you at one of the meetings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christine A. Ruth".

Christine A. Ruth, PHR, IPMA-CP
Director - Human Resources

/car



Rates Expire 06/30/09

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: ALVAR P. RISSANEN

Section 1 - Election for Retiree Health Benefit Coverage

I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$233.06	☐ Single & Family without Dental \$933.94	☐ Single and Dependent with Dental \$963.94
20 - 24 Years 33.5 %	☐ Single (Medical, Prescription, Dental) \$158.14	☐ Single & Dependent without Dental \$857.03	☐ Single and Dependent with Dental \$887.03
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$79.24	☐ Single & Dependent without Dental \$780.13	☐ Single and Dependent with Dental \$830.13
30 Years 0 %	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$700.89	☐ Single and Dependent with Dental \$760.89

I understand and agree that (initial all):

initial
AR

These rates are subject to change.

initial
AR

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

initial
AR

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

initial
AR

Coverage with the City of North Charleston will end when I become eligible for Medicare benefits.

initial
AR

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

initial
AR

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date
6-26-09

Retiree Signature
[Signature]

Date
6-30-09

Human Resources Department
[Signature]

403011

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2010

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Alvar Rissanen

Section 1 – Election for Retiree Health Benefit Coverage.

☐ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$261.35	☐ Single & Family without Dental \$1,109.37	☐ Single and Dependent with Dental \$1,159.37
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$174.06	☐ Single & Dependent without Dental \$1,022.08	☐ Single and Dependent with Dental \$1,072.12
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$88.86	☐ Single & Dependent without Dental \$936.88	☐ Single and Dependent with Dental \$986.88
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$848.02	☒ Single and Dependent with Dental \$898.02

I understand and agree that (initial all):

Initial
AR

These rates are subject to change.

Initial
AR

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
AR

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
AR

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

Initial
AR

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial
AR

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

6-22-10
 Date

Alvar Rissanen
 Retiree Signature

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2011

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Alvar Rissano, Jr.

Official Retirement Date: 9-30-05

Section 1 - Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$276.03	☐ Single & Dependent without Dental \$1,277.36	☐ Single and Dependent with Dental \$1,327.36
20 - 24 Years 53.3 %	☐ Single (Medical, Prescription, Dental) \$183.17	☐ Single & Dependent without Dental \$1,185.49	☐ Single and Dependent with Dental \$1,235.49
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$93.51	☐ Single & Dependent without Dental \$1,145.63	☐ Single and Dependent with Dental \$1,195.63
30 Years 0 %	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$1,052.32	☐ Single and Dependent with Dental \$1,102.32

I understand and agree that (initial all):

☒ These rates are subject to change.

☒ I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

☒ If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

☒ Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

☒ It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required and understand that the only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (initial only if waiving retiree coverage)

☒ I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date 6-25-11

Retiree Signature [Signature]

Date _____

Human Resources Department

403009

**Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2012**

**City of North Charleston
Retiree Election Form
Health Benefit Coverage**

Retiree Name: Alvar Rissanen, Jr.

Official Retirement Date: 09/30/05

Section 1 - Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$298.44	☐ Single & Dependent without Dental \$1,367.46	☐ Single and Dependent with Dental \$1,437.46
20 - 24 Years 33.3 %	☐ Single (Medical, Prescription, Dental) \$198.76	☐ Single & Dependent without Dental \$1,287.76	☐ Single and Dependent with Dental \$1,357.76
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$101.47	☐ Single & Dependent without Dental \$1,190.49	☐ Single and Dependent with Dental \$1,240.49
30 Years 0 %	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$1,089.02	☒ Single and Dependent with Dental \$1,139.02

I understand and agree that (initial all):

☒ These rates are subject to change.

☒ I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

☒ If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

☒ Coverage with the City of North Charleston will end when either I and/or my dependent(s) become eligible for Medicare benefits. If I become eligible for Medicare benefits before my dependent(s), I understand that my dependent(s) will receive a COBRA notice and are no longer eligible for dependent coverage.

☒ It is my responsibility to notify the City of North Charleston of any change that occurs, such as adding/deleting a dependent, or of an address change, or if I and/or my dependent(s) covered become eligible to receive Medicare. I will complete the appropriate change forms required.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

☒ I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date

6-18-12

Retiree Signature

[Signature]

Date

Human Resources Department

403008

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2013

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Alvar R. Rissanen, Jr.

Official Retirement Date: 09/30/05

Section 1 – Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$298.44	☐ Single & Dependent without Dental \$1,387.46	☐ Single and Dependent with Dental \$1,437.46
20 - 24 Years 33.3%	☐ Single (Medical, Prescription Dental) \$198.76	☐ Single & Dependent without Dental \$1,287.78	☐ Single and Dependent with Dental \$1,337.78
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$101.47	☐ Single & Dependent without Dental \$1,190.49	☐ Single and Dependent with Dental \$1,240.49
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$1,089.02	☒ Single and Dependent with Dental \$1,139.02

I understand and agree that (initial all):

Total Amount for Coverage: \$ 1,139.02

Initial ARR

These rates are subject to change.

Initial ARR

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial ARR

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial ARR

Coverage with the City of North Charleston will end when either I and/or my dependent/s become eligible for Medicare benefits. If I become eligible for Medicare benefits before my dependent/s, I understand that dependent/s, will receive a COBRA notice and are no longer eligible for dependent coverage.

Initial ARR

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change, or if I and/or my dependent/s covered become eligible to receive Medicare. I will complete the appropriate change forms required.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial ARR

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date 6-14-13

Retiree Signature Alvar R. Rissanen, Jr.

Date _____

Human Resources Department



Rates Expire 06/30/09

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: MICHAEL H. BAXLEY

Section 1 - Election for Retiree Health Benefit Coverage

I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$233.05	☐ Single & Family without Dental \$933.94	☐ Single and Dependent with Dental \$983.94
20 - 24 Years 33.5 %	☐ Single (Medical, Prescription, Dental) \$156.14	☐ Single & Dependent without Dental \$857.03	☐ Single and Dependent with Dental \$907.03
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$79.24	☐ Single & Dependent without Dental \$780.13	☐ Single and Dependent with Dental \$830.13
30 Years 9 %	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$700.89	☐ Single and Dependent with Dental \$750.89

I understand and agree that (Initial all):

Initial
MB

These rates are subject to change.

Initial
MB

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
MB

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
MB

Coverage with the City of North Charleston will end when I become eligible for Medicare benefits.

Initial
MB

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (initial only if waiving retiree coverage)

Initial
MB

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date
6-30-09

Retiree Signature
Michael H. Baxley

Date

Human Resources Department

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2010

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Michael Baxley

Section 1 – Election for Retiree Health Benefit Coverage

☐ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$261.35	☐ Single & Family without Dental \$1,109.37	☐ Single and Dependent with Dental \$1,159.37
20 - 24 Years 33.3%	☐ Single (Medical, Prescription Dental) \$174.06	☐ Single & Dependent without Dental \$1,022.08	☐ Single and Dependent with Dental \$1,072.12
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$88.86	☐ Single & Dependent without Dental \$936.88	☐ Single and Dependent with Dental \$986.88
30 Years 0%	☒ <u>Michael H. Baxley</u> Single (Medical, Prescription, Dental) \$0.00	☒ <u>Lois C. Baxley</u> Single & Dependent without Dental \$848.02	☐ Single and Dependent with Dental \$898.02

I understand and agree that (initial all):

MB

These rates are subject to change.

MB

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

MB

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

MB

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

MB

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

MB

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

6-23-10
Date

Michael H. Baxley
Retiree Signature

403005

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2011

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Michael Baxley

Official Retirement Date: 6-30-05

Section 1 - Election for Retiree Health Benefit Coverage

☐ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 11.50 %	☐ Single (Medical, Prescription, Dental) \$275.03	☐ Single & Dependent without Dental \$1,277.35	☐ Single and Dependent with Dental \$1,327.35
20 - 24 Years 33.3 %	☐ Single (Medical, Prescription, Dental) \$183.17	☐ Single & Dependent without Dental \$1,186.49	☐ Single and Dependent with Dental \$1,236.49
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$93.61	☐ Single & Dependent without Dental \$1,145.63	☐ Single and Dependent with Dental \$1,195.63
30 Years 0 %	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$1,032.32	☐ Single and Dependent with Dental \$1,102.32

I understand and agree that (Initial all):

MJB

These rates are subject to change.

MJB

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment to full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retroacted.

MJB

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

MJB

Coverage with the City of North Charleston will end when (and/or my dependent become eligible for Medicare benefits.

MJB

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required and understand that the only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

new

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date _____

Michael Baxley
Retiree Signature

Date _____

Human Resources Department

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2012

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Michael Baxley

Official Retirement Date: 6/30/05

Section 1 - Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 60 %	☐ Single (Medical, Prescription, Dental) \$296.44	☐ Single & Dependent Without Dental \$1,357.48	☐ Single and Dependent with Dental \$1,437.48
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$198.76	☐ Single & Dependent without Dental \$1,287.78	☐ Single and Dependent with Dental \$1,337.78
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$101.47	☐ Single & Dependent without Dental \$1,190.48	☐ Single and Dependent with Dental \$1,240.49
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$1,088.02	☐ Single and Dependent with Dental \$1,138.02

I understand and agree that (initial all):

☒

These rates are subject to change.

☒

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

☒

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

☒

Coverage with the City of North Charleston will end when either I and/or my dependent(s) become eligible for Medicare benefits. If I become eligible for Medicare benefits before my dependent(s), I understand that my dependent(s) will receive a COBRA notice and are no longer eligible for dependent coverage.

☒

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change, or if I and/or my dependent(s) covered become eligible to receive Medicare. I will complete the appropriate change forms required.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

☐

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective 6-6-12. I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date

Retiree Signature

Date

Human Resources Department

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2013

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Michael Baxley

Official Retirement Date: 06/30/05

Section 1 – Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$298.44	☐ Single & Dependent without Dental \$1,387.46	☐ Single and Dependent with Dental \$1,437.46
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$198.76	☐ Single & Dependent without Dental \$1,287.78	☐ Single and Dependent with Dental \$1,337.78
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$101.47	☐ Single & Dependent without Dental \$1,190.49	☐ Single and Dependent with Dental \$1,240.49
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$1,089.02	☐ Single and Dependent with Dental \$1,139.02

I understand and agree that (initial all):

Total Amount of Coverage: \$ 1,089.02

Initial
MFB

These rates are subject to change.

Initial
MFB

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
MFB

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
MFB

Coverage with the City of North Charleston will end when either I and/or my dependent/s become eligible for Medicare benefits. If I become eligible for Medicare benefits before my dependent/s, I understand that my dependent/s, will receive a COBRA notice and are no longer eligible for dependent coverage.

Initial
MFB

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change, or if I and/or my dependent/s covered become eligible to receive Medicare. I will complete the appropriate change forms required.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial

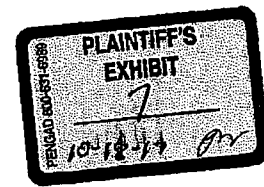
I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date

6-14-13

Retiree Signature

Michael Baxley



Rates Expire 06/30/09

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Clifford W. Fomer

Section 1 - Election for Retiree Health Benefit Coverage

I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15-19 Years 50%	a. Single (Medical, Prescription, Dental) \$233.05	b. Single & Family without Dental \$253.04	c. Single and Dependent with Dental \$287.94
20-24 Years 63.5%	a. Single (Medical, Prescription, Dental) \$156.14	b. Single & Dependent without Dental \$187.03	c. Single and Dependent with Dental \$207.03
25-29 Years 77%	a. Single (Medical, Prescription, Dental) \$179.24	b. Single & Dependent without Dental \$200.13	c. Single and Dependent with Dental \$220.13
30 Years 89%	a. Single (Medical, Prescription, Dental) \$200	b. Single & Dependent without Dental \$220.89	c. Single and Dependent with Dental \$240.89

I understand and agree that (Initial all):

☒ These rates are subject to change.

☒ I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when enrolling in coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

☒ If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

☒ Coverage with the City of North Charleston will end when I become eligible for Medicare benefits.

☒ It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

☒ I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future. I understand I will receive a COBRA notification

Date 6-27-09

Clifford W. Fomer
Retiree Signature

Date 6-29-09

Robert Pugh
Human Resources Department

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2010

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Clifford Forner

Section 1 – Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50.0%	☐ Single (Medical, Prescription, Dental) \$261.35	☐ Single & Family without Dental \$1,109.37	☐ Single and Dependent with Dental \$1,159.37
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$174.06	☐ Single & Dependent without Dental \$1,022.08	☐ Single and Dependent with Dental \$1,072.12
25 - 29 Years 17%	☒ Single (Medical, Prescription, Dental) \$88.88	☐ Single & Dependent without Dental \$936.88	☐ Single and Dependent with Dental \$986.88
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$848.02	☐ Single and Dependent with Dental \$898.02

I understand and agree that (initial all):

Initial
Cliff

These rates are subject to change.

Initial
Cliff

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
Cliff

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
Cliff

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

Initial
Cliff

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial
Cliff

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date

6-23-10

Retiree Signature

Clifford W. Forner

405001

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2011

City of North Charleston
Retiree Election Form
Health-Benefit Coverage

Retiree Name: Clifford Forner

Official Retirement Date: 6-28-09

Section 1 – Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$275.03	☐ Single & Dependent without Dental \$1,277.35	☐ Single and Dependent with Dental \$1,327.35
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$183.17	☐ Single & Dependent without Dental \$1,185.49	☐ Single and Dependent with Dental \$1,235.49
25 - 29 Years 17%	☒ Single (Medical, Prescription, Dental) \$93.51	☐ Single & Dependent without Dental \$1,145.83	☐ Single and Dependent with Dental \$1,195.83
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$1,052.32	☐ Single and Dependent with Dental \$1,102.32

I understand and agree that (initial all):

Initial
C.F.

These rates are subject to change.

Initial
C.F.

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
C.F.

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
C.F.

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

Initial
C.F.

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required and understand that the only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date

6-12-11

Retiree Signature

Clifford Forner

Date

Human Resources Department

405002

477

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2012

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Clifford Forner

Official Retirement Date: 06/28/09

Section 1 – Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$298.44	☐ Single & Dependent without Dental \$1,387.46	☐ Single and Dependent with Dental \$1,437.46
20 - 24 Years 33.3%	☐ Single (Medical, Prescription Dental) \$198.76	☐ Single & Dependent without Dental \$1,287.78	☐ Single and Dependent with Dental \$1,337.78
25 - 29 Years 17%	☒ Single (Medical, Prescription, Dental) \$101.47	☐ Single & Dependent without Dental \$1,190.49	☐ Single and Dependent with Dental \$1,240.49
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$1,089.02	☐ Single and Dependent with Dental \$1,139.02

I understand and agree that (initial all):

Initial
CWF

These rates are subject to change.

Initial
CWF

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
CWF

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
CWF

Coverage with the City of North Charleston will end when either I and/or my dependent/s become eligible for Medicare benefits. If I become eligible for Medicare benefits before my dependent/s, I understand that dependent/s, will receive a COBRA notice and are no longer eligible for dependent coverage.

Initial
CWF

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change, or if I and/or my dependent/s covered become eligible to receive Medicare. I will complete the appropriate change forms required.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial
CWF

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date 5/31/12

Clifford Forner
Retiree Signature

Date _____

Human Resources Department

405003

City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
HUMAN RESOURCES DEPARTMENT CHRISTINE A. RUTH, DIRECTOR

December 3, 2010

CERTIFIED MAIL

Mr. Willie Hood
1348 Coosaw Drive
Charleston, SC 29407

Dear Mr. Hood:

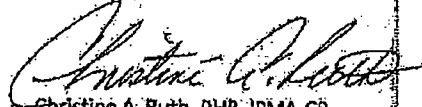
Our records indicate that on January 9, 2011 you become eligible for Medicare benefits. Thus, your benefits with the City of North Charleston will end. It is imperative that you enroll for Medicare Part A and Medicare Part B immediately.

We are pleased to announce that we are able to offer you and/or your Medicare-eligible dependant the opportunity to have a medical and prescription drug benefit program through Humana when your current medical and prescription benefits end with the City of North Charleston on January 9, 2011.

The Humana Group Medicare Employer Preferred Provider Organization (PPO) Plan is available if you live within the service areas listed in the summary of benefits. Humana has a broad network of primary care doctors, specialists, and other hospitals. However, the Humana Group Medicare PPO allows you to access any provider or facility in or out of the Humana network. You don't need a referral to see a doctor; however, you will pay less out-of-pocket costs by staying in the network. This is a brief summary of the Humana plan and not a comprehensive description of the available benefits.

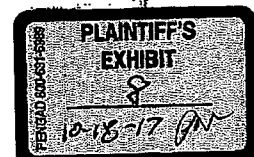
If you are interested in receiving more information regarding the Humana product, please contact Kathy Ross in the Human Resources Department at 740-2596. Or, if you have any questions regarding this letter please do not hesitate to contact Kathy.

Sincerely,



Christine A. Ruth, PHR, IPMA-CP
Director - Human Resources

/car



PO Box 190016 • North Charleston, SC 29419-9016 • 843-554-5700 • northcharleston.org

404007

**CITY OF NORTH CHARLESTON
RETIREE HEALTH CARE BENEFITS PLAN SUMMARY
(OTHERWISE KNOWN AS OPEB - OTHER POST-
EMPLOYMENT BENEFITS)**

Upon retirement from the city, employees who meet certain eligibility requirements have the option to retain health and dental insurance under the City's self-insured plan by paying a percentage of the applicable rate budgeted for full-time employees. To be eligible, the employee must meet the State eligibility requirements for retirement with pay and have been employed by the City for at least 5 years. Currently, there are approximately 67 participants in the plan.

Current Plan:

Eligibility/Cost sharing requirements:

1. Retirees with less than 15 years of service with the City of North Charleston pay 100% of budgeted costs. Annual budgeted costs for the 2009/2010 year are \$5,400 per employee.
2. Retirees with 15-19 years of service pay 50% (\$2,700).
3. Retirees with 20-24 years of service pay 33% (\$1,800).
4. Retirees with 25-29 years of service pay 17% (\$945).
5. Retirees with 30 or more years of service pay 0%.

Existing retirees enjoy post-65 coverage for life. Retirees can pay a blended rate for spousal/dependent coverage.

Proposed Plan:

Eligibility/Cost sharing requirements:

1. Retirees with less than 20 years of service are not eligible.
2. Retirees with 20-24 years of service pay 50% (\$2,700).
3. Retirees with 25-29 years of service pay 33% (\$1,800).
4. Retirees with 30 or more years of service pay 25% (\$1,350).

A. Retirees in plan by 6/30/2009 will be grandfathered under existing conditions and enjoy post-65 benefits for life.

B. Post-65 benefits will be eliminated for retirees joining plan on or after 7/1/2009.

413004





206000

Memorandum ----- *City of North Charleston*

R. Keith Summey

Mayor *[Signature]*

TO: Members of City Council

RE: 1998/1999 Budget

DATE: May 8, 1998

Please find attached your work copy of the proposed 1998/1999 Budget for the City of North Charleston. Please review it in preparation of our Finance Committee Workshop on Friday, May 15, 1998. We will begin promptly at 9:00 a.m. and lunch will be provided.

You will note the budget workbook is in a different format this year than in the past. We trust this will be easier to use for your review. We have included all requests by Department Heads and what has been approved by me for recommendation to Council.

Please allow me to make comments on the proposed budget for next year. First, we have been very fortunate to receive numerous Federal and State grants to bolster our Police Department over the last four years. Some of these grants have ended or are reducing in percentage allocation. Our contracts are being renewed with the U.S. Department of Navy for adjusted amounts for police and fire protection on the former Navy Base. Certainly, none of this is new information to us and we have been working to adjust for these events. Public Safety is a prime emphasis of my administration. The Federal and State Grants have allowed us to increase our police department and provide new technology at an earlier time than when we would have been able to provide these items. This has greatly improved our department. I am proposing to retain all of these positions formerly funded by the grants. Funding for five (5) COPS Ahead officers, one (1) Weed and Seed officer, one (1) Victim's Advocate position, ten (10) SPEED Team officers, ten (10) officers funding provided by County of Charleston and at least twelve (12) officers from the former Navy Base contract are included in this proposed budget. Each of these are affected totally or partially from the endings of the grants.

413000

In addition, two Battalion Chiefs for the Fire Department are being included in the budget. These were paid for in the past by the Navy. In order to retain these positions, we are tightening our belt in operating cost for the next year. You will note these reductions in your workbook.

Another personnel adjustment in the proposed budget is funding for ten (10) new firefighters to staff the new upper Dorchester Road Fire Station, beginning January 1999.

Our Department Heads made various requests for additional staff in the budget preparation. A recap sheet of the request and request for upgrades are included for your information. The only additional staff included in the proposed budget is the ten (10) firefighters, and the only upgrades included are two police officers to Forensic Technicians 1 (Polygraph Examiners). Other request may be valid, but will wait until next year for review.

Also included in the proposed budget is a merit increase for all eligible employees, a 2% cost of living adjustment (to be effective the first paycheck in January 1999) and a 3% for exempt positions.

A few capital projects are being carried forward into next years budget, such as the upper Dorchester Road Fire Station, MOMAG improvements, and Ralph Hendricks Park.

A recap sheet is included indicating the funding request by outside agencies, as well, as those who were funded this year, but did not resubmit any request.

The proposed budget will require a tax mileage levy of 78 mills or the same rate as this current budget year.

I look forward to our discussions in the workshop and ask for your review prior to Friday, May 15, 1998. If you have any questions prior to then, do not hesitate to call Ray Anderson or myself. Once again, thanks for your cooperation and assistance as we work for the citizens of our community and our employees who serve them.

RKS/dmh



Rates Expire 06/30/09

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Willie Hood

Section 1 - Election for Retiree Health Benefit Coverage

I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

Years of Service	Single (Medical, Prescription, Dental)	Single & Dependent without Dental	Single and Dependent with Dental
15 - 19 Years 33.6%	Single (Medical, Prescription, Dental) \$156.14	Single & Dependent without Dental \$657.03	Single and Dependent with Dental \$907.03
20 - 24 Years 33.6%	Single (Medical, Prescription, Dental) \$156.14	Single & Dependent without Dental \$657.03	Single and Dependent with Dental \$907.03
25 - 29 Years 17%	Single (Medical, Prescription, Dental) \$78.24	Single & Dependent without Dental \$780.13	Single and Dependent with Dental \$830.13
30 Years 0%	Single (Medical, Prescription, Dental) \$0.00	Single & Dependent without Dental \$700.89	Single and Dependent with Dental \$750.89

I understand and agree that (Initial all):

Initial
WHP

These rates are subject to change.

Initial
WHP

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be returned.

Initial
WHP

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
WHP

Coverage with the City of North Charleston will end when I become eligible for Medicare benefits.

Initial
WHP

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial
WHP

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date
6-26-09

Retiree Signature
Willie Hood

Date
06-29-09

Human Resources Department
Debra Riter

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2010

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Willie Hood

Section 1 – Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$261.35	☐ Single & Family without Dental \$1,109.37	☐ Single and Dependent with Dental \$1,159.37
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$174.06	☐ Single & Dependent without Dental \$1,022.08	☐ Single and Dependent with Dental \$1,072.12
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$88.86	☐ Single & Dependent without Dental \$936.88	☐ Single and Dependent with Dental \$986.88
30 Years 0%	☒ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$848.02	☐ Single and Dependent with Dental \$898.02

I understand and agree that (initial all):

Initial
WPH

These rates are subject to change.

Initial
WPH

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial
WPH

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial
WPH

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

Initial
WPH

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial
WPH

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date 6-22-10

Willie Hood
 Retiree Signature

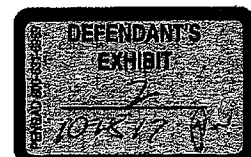
403012

NORTH CHARLESTON FINANCE COMMITTEE
BUDGET WORKSHOP
MAY 15, 1998
MINUTES

A budget workshop of the North Charleston Finance Committee was called to order by Council member Don John Hays, Chairman, at 9:25 a.m. in Room 515 at North Charleston City Hall. Other members of the Committee in attendance were: Messrs. David Bowers, Bob King, Sam Hart, Steve Ayer, Kurt Taylor, Mrs. Charlotte Gillespie, Mrs. Gussie Greene, Ms. Dot Williams and Mayor Summey, constituting a quorum. Mr. A. C. Mitchum was absent. Also present were Deputy Municipal Clerk Paula F. Williams, Municipal Clerk Dianne Greer, Personnel Director Bob Connello, Finance Director Warren Newton and Special Assistant to the Mayor Ray Anderson. Other department heads and members of the public were present as well. The media, organizations and individuals interested were advised of the meeting in compliance with Sec. 34-4-80(e) of the South Carolina Code of Laws for 1976, as amended.

Chairman Hays called upon Mayor Summey for opening comments. Mayor Summey provided an overview of his recommended budget to the Finance Committee. Numerous grants for police personnel were ending and he is proposing to include all of these positions as identified in partial or full funding. The proposed budget includes assuming the cost of two fire chiefs previously financed by the Department of Navy, as a part of the contract with the Navy for fire protection on the base. Mayor Summey updated the Committee on the discussion with the Navy and Redevelopment Authority as our contract relates to police and fire protection.

Staff requested in excess of 100 new employees, along with numerous upgrades and none of these were included in the proposed budget, except for 10 firefighters for the new Dorchester Road fire station and 2 upgrades in the Police Department. The new station will be completed after January 1999. All of the new requests and upgrades



were evaluated, however due to absorption of the other staff, the Mayor is not recommending these during this budget preparation.

Mayor Summey indicated the proposed budget includes the 3.5 percent merit adjustment for all eligible employees. He is also proposing a 2 percent cost of living adjustment for all employees to take effect on the first pay period in January, 1999. Also included is a 3 percent increase for the exempt employees, beginning on the first pay period in July, 1998.

The proposed budget will require a tax millage levy of 78 mills or the same tax rate as the current budget year.

There was discussion regarding the merit system which determines how employees receive pay raises. Mr. King asked how a two-step increase is obtained and the Mayor responded by stating that a department head recommends the two-step increase and the Mayor has the authority to approve or disapprove the same.

Chairman Hays then continued with the meeting. The first area to be reviewed was the proposed budget of the Executive Department. Several questions were raised and answered, and no changes were made.

The next matter before the Committee was the budget of the Legal Department. City Attorney J. Brady Hair was present and made a brief statement regarding a request for another City prosecutor. He indicated that the present Staff Attorney would become the Deputy City Attorney and a newly hired individual would become prosecutor. After discussion, Mayor Summey moved:

"That the position of Deputy City Attorney be established at a salary of \$42,500, that a new City prosecutor be hired at a base salary of \$32,500 (\$42,508 including benefits), and that the hourly rate of the City Attorney be increased from \$75.00 to \$100.00 per hour."

Seconded by Mrs. Williams. The motion carried unanimously with favorable votes.

The next matter before the Committee was the budget of City Hall Operations. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget of the Municipal Annex. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget of City Council. After discussion regarding travel, Mrs. Gillespie moved:

"That the Deputy Municipal Clerk be authorized to attend the Municipal Clerks and Finance Officers meeting in Myrtle Beach for three (3) days, that the sum of \$450 be allocated for this travel, and that the City Council budget be adjusted internally."

Seconded by Mr. King. The motion carried unanimously with favorable votes.

The next matter before the Committee was the budget of the Finance Department. The proposed budget of the Finance Department will be submitted to Council without change.

The next matter before the Committee was the budget of the Purchasing Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget of the MIS Department. Tom Jackson, MIS Director, answered questions by the Committee. The proposed budget will be submitted to Council without change.

North Charleston Finance Committee
May 15, 1998
Page #4

The next matter before the Committee was the budget of the Municipal Court. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget of the Personnel Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget of the Planning Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget of the Code Enforcement Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the budget for Community Promotions. The proposed budget will be submitted to Council without change.

Chairman Hays recessed the meeting at 11:55 a.m. for lunch.

Chairman Hays called the meeting back to order at 12:40 p.m. The Committee continued discussing the 1998-99 budget. The next matter was the budget for the Police Department. Major Mike Wade and Lieutenant Camille Petersen answered questions by the Committee. After discussion, Mrs. Gillespie moved:

"That the Committee delete the alarm system for the Wells Cargo Trailer (\$200.00) and the class III towing hitch (\$400.00) for a total of \$600.00.

Seconded by Mr. Bowers. The motion carried unanimously with favorable votes. Mr. Taylor was not present to vote.

Mayor Summey moved:

North Charleston Finance Committee
May 15, 1998
Page #5

"That the Committee delete the stop stick rack kit (\$5,235.00)."

Seconded by Mrs. Williams. Messrs. Bowers, King, Hart, Mrs. Williams, Mr. Ayer, Mrs. Greene, Mrs. Gillespie, Mayor Summey and Mr. Hays voted yes. Mr. Taylor voted no. The motion carried.

The next matter before the Committee was the budget for the Fire Department. Chief Rissanen answered questions by the Committee. At 1:25 p.m., Mayor Summey moved:

"That the Committee go into executive session to discuss a personnel matter."

Seconded by Mrs. Williams. The motion carried unanimously with favorable votes.

Chairman Hays called the meeting back to order at 1:40 p.m. and reported there wasn't any action taken in Executive Session. The proposed Fire Department budget will be submitted to Council without change.

The next matter before the Committee was the budget for the Building Inspections Department. Mr. Darbis Briggman answered questions by the Committee. After discussion, Mr. Bowers moved:

"That the Committee include in the budget a pickup truck, with associated costs, at the end of the day to see if there's money left."

Seconded by Mrs. Williams. The motion carried unanimously with favorable votes.

Mayor Summey moved:

"That the Committee decrease the transportation account by \$4,800.00."

North Charleston Finance Committee
May 15, 1998
Page #6

Seconded by Mr. Bowers. The motion carried unanimously with favorable votes.

The next matter before the Committee was the proposed budget for the Public Works Administrative Department. Mr. Murrell Hawkins answered questions by the Committee. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Public Works Maintenance Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Public Works Shop Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Public Works Sanitation Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Recreation Department. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the City Community Improvement. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for Special Projects. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for Accommodations Tax Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the HOME Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for CDBG. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Parking Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Colliseum Operation Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Weed & Seed Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Admissions Tax Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Violent Crimes Task Force Fund. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the COPS Ahead. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the COPS More. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the City Accommodations Tax. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Local Law Enforcement Block Grant. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the Narcotics Intervention Strike. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the General Obligation Bond. The proposed budget will be submitted to Council without change.

The next matter before the Committee was the proposed budget for the COPS Debt. The proposed budget will be submitted to Council without change.

Chairman Hays asked for a recap of the day's actions.

Mr. Anderson noted the Committee's action added in excess of \$56,000 to the proposed budget. The following items were identified during the workshop.

Legal	Legal Staff Attorney	+\$42,508.00
Legal	Deputy City Attorney	+\$3,250
Legal	Office Supplies	+\$3,500.00
Police	Alarm & hitch	-\$600.00
Police	Stop Stick Rack Kit	-\$5,235.00
Building	Building truck	+\$16,250.00
Building	Gas & Insurance	+\$1,600.00
Building	Transportation	-\$4,800.00

Mayor Summey requested staff to review other items to remove from the budget. The staff recommended the following items be deleted from the budget:

1. Community Promotion will be adjusted by a 10% reduction across the board which will amount to (6600)
2. Police Department - Department Supplies
Narcotic Test Kits reduction (850)
Rechargeable Flood Light reduction (845)
Maintenance & Service reduction (14,100)
3. Fire Department Books & Publication reduction (500)
4. Building Inspection Personal Travel (920)
5. Reduction of Operating Budget Contingency (25,000)

Mr. Anderson reported the replacement of the gas tanks at City Hall would not be bid prior to July 1, 1998 and this item should be carried forward into the new budget. An additional \$24,000 should be added to cover the projected cost.

Mr. Anderson indicated staff would evaluate all of the adjustments requested today and report the final number to the Committee by the regular Finance Committee meeting next week.

Mr. Taylor moved:

"That the Committee accept the recommendations of Mr. Anderson."

Seconded by Mrs. Williams. The motion carried unanimously with favorable votes.

Mayor Summey distributed information regarding the City providing health insurance for retired employees at a minimal to no cost to retired employees. After discussion, Mrs. Williams moved:

North Charleston Finance Committee
May 15, 1998
Page #10

"That the Committee approve the health insurance for retired employees."

Seconded by Mrs. Greene. Messrs. Bowers, Hart, Mrs. Williams, Messrs. Taylor, Ayer, Mrs. Greene, Mrs. Gillespie, Mayor Summey and Mr. Hays voted yes. Mr. King voted no. The motion carried.

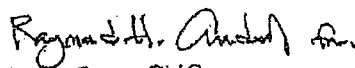
Mrs. Williams moved:

"That the Committee recommend to Council approval of the 1998-99 budget."

Seconded by Mrs. Gillespie. The motion carried unanimously with favorable votes.

There being no further business to come before the Committee, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,


Dianne Greer, CMC
Municipal Clerk

Paula F. Williams, CMC
Deputy Municipal Clerk

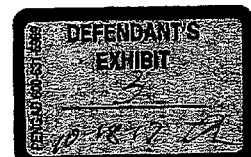
ATTEST:

AN ORDINANCE

AMENDING SECTION 9 "OTHER FRINGE BENEFITS" OF THE
PERSONNEL POLICY OF THE CITY OF NORTH CHARLESTON AS ADOPTED ON
FEBRUARY 27, 1975 AND SUBSEQUENT AMENDMENT THERETO.

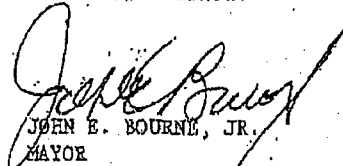
BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE
CITY OF NORTH CHARLESTON, ASSEMBLED, THAT THE PERSONNEL POLICY OF
THE CITY OF NORTH CHARLESTON IS HEREBY AMENDED BY ADDING SECTION
9.2 AS FOLLOWS:

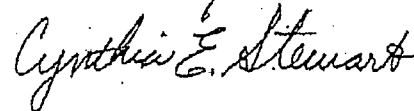
- 9.2 A. Upon retirement from the City, employees who meet
the requirements listed below have the option to
retain, health, life, and dental insurance under
the City's group plan by paying the applicable rate
budgeted for full time active employees:
1. Meet the state eligibility requirements for
retirement with pay:
 - a. Regular retirement: age 60 or thirty years
covered service.
 - b. Police/Fire retirement: age 55 or 30 years
covered service, or early retirement age 50
or 25 years covered service.
 - c. Entitled to receive state disability
retirement pay.
 2. Have been employed by the City for a minimum
of five years.
 3. Complete applicable forms and make a quarterly
advance payment.
- B. After initial enrollment, advance payments may be
made in quarterly, semi-annual, or annual
installments.
- C. Coverage will terminate upon failure of the retiree
to make the required advance payment, upon
termination of the City's group plan, or when
determined to be in the best interest of the City.
- D. The insurance rates will be reviewed semi-annually
and adjustments made as necessary.



THE WITHIN ORDINANCE TO BECOME EFFECTIVE IMMEDIATELY UPON ITS
RATIFICATION BY COUNCIL:

Ratified in City Council this 24th
day of MAY, in the Year of Our
Lord, 1984, and in the 208th year
of the Independence of the United
States of America.

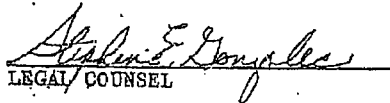

JOHN E. BOURNE, JR.
MAYOR


CYNTHIA E. STEWART
MUNICIPAL CLERK

ATTEST:

CYNTHIA E. STEWART
MUNICIPAL CLERK

APPROVED AS TO CONTENT AND FORM


STEPHEN E. GONZALES
LEGAL COUNSEL